

B, § 1000(a)(9) [title IV, § 4732(a)(10)(A), (11)], Nov. 29, 1999, 113 Stat. 1536, 1501A-582, 1501A-583; Pub. L. 107-273, div. C, title III, § 13206(b)(1)(B), Nov. 2, 2002, 116 Stat. 1906.)

AMENDMENTS

2002—Subsecs. (a), (c). Pub. L. 107-273 made technical correction to directory language of Pub. L. 106-113, § 1000(a)(9) [title IV, § 4732(a)(10)(A)]. See 1999 Amendment note below.

1999—Subsecs. (a), (c). Pub. L. 106-113, § 1000(a)(9) [title IV, § 4732(a)(10)(A)], as amended by Pub. L. 107-273, substituted “Director” for “Commissioner” wherever appearing.

Subsec. (d). Pub. L. 106-113, § 1000(a)(9) [title IV, § 4732(a)(11)], substituted “Director” for “Secretary of Commerce”.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106-113, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section 102(c) of Pub. L. 98-622 provided that: “The amendments made by this section [enacting this section and item 157 in the table of sections of this chapter] shall take effect six months after the date of enactment of this Act [Nov. 8, 1984].”

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (d) of this section relating to annual reports to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 51 of House Document No. 103-7.

CHAPTER 15—PLANT PATENTS

Sec.	
161.	Patents for plants.
162.	Description, claim.
163.	Grant.
164.	Assistance of Department of Agriculture.

§ 161. Patents for plants

Whoever invents or discovers and asexually reproduces any distinct and new variety of plant, including cultivated sports, mutants, hybrids, and newly found seedlings, other than a tuber propagated plant or a plant found in an uncultivated state, may obtain a patent therefor, subject to the conditions and requirements of this title.

The provisions of this title relating to patents for inventions shall apply to patents for plants, except as otherwise provided.

(June 19, 1952, ch. 950, 66 Stat. 804; Sept. 3, 1954, ch. 1259, 68 Stat. 1190.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 31, part (R.S. 4886, amended (1) Mar. 3, 1897, ch. 391, § 1, 29 Stat. 692, (2) May 23, 1930, ch. 312, § 1, 46 Stat. 376, (3) Aug. 5, 1939, ch. 450, § 1, 53 Stat. 1212).

The provision relating to plants in the corresponding section of existing statute is made a separate section.

AMENDMENTS

1954—Act Sept. 3, 1954, provided that plant seedlings, discovered, propagated asexually, and proved to have new characteristics distinct from other known plants are patentable.

§ 162. Description, claim

No plant patent shall be declared invalid for noncompliance with section 112 of this title if the description is as complete as is reasonably possible.

The claim in the specification shall be in formal terms to the plant shown and described.

(July 19, 1952, ch. 950, 66 Stat. 804.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 33, part (R.S. 4888, amended (1) Mar. 3, 1915, ch. 94, § 1, 38 Stat. 958, (2) May 23, 1930, ch. 312, § 2, 46 Stat. 376).

The first paragraph is the provision in R.S. 4888 (see section 112). The second paragraph is not in the statute but represents the actual practice.

§ 163. Grant

In the case of a plant patent, the grant shall include the right to exclude others from asexually reproducing the plant, and from using, offering for sale, or selling the plant so reproduced, or any of its parts, throughout the United States, or from importing the plant so reproduced, or any parts thereof, into the United States.

(July 19, 1952, ch. 950, 66 Stat. 804; Pub. L. 105-289, § 3(a), Oct. 27, 1998, 112 Stat. 2781.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 40, part (R.S. 4884, amended May 23, 1930, ch. 312, § 1, 46 Stat. 376).

This provision is from R.S. 4884 (see section 154) amended in language.

AMENDMENTS

1998—Pub. L. 105-289 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: “In the case of a plant patent the grant shall be of the right to exclude others from asexually reproducing the plant or selling or using the plant so reproduced.”

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-289, § 3(b), Oct. 27, 1998, 112 Stat. 2781, provided that: “The amendment made by subsection (a) [amending this section] shall apply to any plant patent issued on or after the date of the enactment of this Act [Oct. 27, 1998].”

FINDINGS AND PURPOSES

Pub. L. 105-289, § 2, Oct. 27, 1998, 112 Stat. 2780, provided that:

“(a) FINDINGS.—The Congress makes the following findings:

“(1) The protection provided by plant patents under title 35, United States Code, dating back to 1930, has historically benefited American agriculture and horticulture and the public by providing an incentive for breeders to develop new plant varieties.

“(2) Domestic and foreign agricultural trade is rapidly expanding and is very different from the trade of the past. An unforeseen ambiguity in the provisions of title 35, United States Code, is undermining the orderly collection of royalties due breeders holding United States plant patents.

“(3) Plant parts produced from plants protected by United States plant patents are being taken from illegally reproduced plants and traded in United States markets to the detriment of plant patent holders.

“(4) Resulting lost royalty income inhibits investment in domestic research and breeding activities associated with a wide variety of crops—an area where the United States has historically enjoyed a strong

international position. Such research is the foundation of a strong horticultural industry.

“(5) Infringers producing such plant parts from unauthorized plants enjoy an unfair competitive advantage over producers who pay royalties on varieties protected by United States plant patents.

“(b) PURPOSES.—The purposes of this Act [see section 1 of Pub. L. 105-289, set out as a Short Title of 1998 Amendments note under section 1 of this title] are—

“(1) to clearly and explicitly provide that title 35, United States Code, protects the owner of a plant patent against the unauthorized sale of plant parts taken from plants illegally reproduced;

“(2) to make the protections provided under such title more consistent with those provided breeders of sexually reproduced plants under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.), as amended by the Plant Variety Protection Act Amendments of 1994 (Public Law 103-349); and

“(3) to strengthen the ability of United States plant patent holders to enforce their patent rights with regard to importation of plant parts produced from plants protected by United States plant patents, which are propagated without the authorization of the patent holder.”

§ 164. Assistance of Department of Agriculture

The President may by Executive order direct the Secretary of Agriculture, in accordance with the requests of the Director, for the purpose of carrying into effect the provisions of this title with respect to plants (1) to furnish available information of the Department of Agriculture, (2) to conduct through the appropriate bureau or division of the Department research upon special problems, or (3) to detail to the Director officers and employees of the Department.

(July 19, 1952, ch. 950, 66 Stat. 804; Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4732(a)(10)(A)], Nov. 29, 1999, 113 Stat. 1536, 1501A-582; Pub. L. 107-273, div. C, title III, § 13206(b)(1)(B), Nov. 2, 2002, 116 Stat. 1906.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 56a (May 23, 1930, ch. 312, § 4, 46 Stat. 376).
Language is changed.

AMENDMENTS

2002—Pub. L. 107-273 made technical correction to directory language of Pub. L. 106-113. See 1999 Amendment note below.

1999—Pub. L. 106-113, as amended by Pub. L. 107-273, substituted “Director” for “Commissioner” in two places.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106-113, set out as a note under section 1 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of Agriculture, with certain exceptions, to Secretary of Agriculture, with power to delegate, see Reorg. Plan No. 2 of 1953, § 1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

CHAPTER 16—DESIGNS

- Sec. 171. Patents for designs.
- 172. Right of priority.
- 173. Term of design patent.

§ 171. Patents for designs

Whoever invents any new, original and ornamental design for an article of manufacture may obtain a patent therefor, subject to the conditions and requirements of this title.

The provisions of this title relating to patents for inventions shall apply to patents for designs, except as otherwise provided.

(July 19, 1952, ch. 950, 66 Stat. 805.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 73 (R.S. 4929, amended (1) May 9, 1902, ch. 783, 32 Stat. 193, (2) Aug. 5, 1939, ch. 450, § 1, 53 Stat. 1212; R.S. 4933).

The list of conditions specified in the corresponding section of existing statute is omitted as unnecessary in view of the general inclusion of all conditions applying to other patents. Language is changed.

§ 172. Right of priority

The right of priority provided for by subsections (a) through (d) of section 119 of this title and the time specified in section 102(d) shall be six months in the case of designs. The right of priority provided for by section 119(e) of this title shall not apply to designs.

(July 19, 1952, ch. 950, 66 Stat. 805; Pub. L. 103-465, title V, § 532(c)(2), Dec. 8, 1994, 108 Stat. 4987.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 32, part (R.S. 4887, amended (1) Mar. 3, 1903, ch. 1019, § 1, 32 Stat. 1225, 1226, (2) June 19, 1936, ch. 594, 49 Stat. 1529, (3) Aug. 5, 1939, ch. 450, § 1, 53 Stat. 1212).

This provision is taken from R.S. 4887 (see section 119) and made a separate section.

AMENDMENTS

1994—Pub. L. 103-465 substituted “subsections (a) through (d) of section 119” for “section 119” and inserted at end “The right of priority provided for by section 119(e) of this title shall not apply to designs.”

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-465 effective 6 months after Dec. 8, 1994, and applicable to all patent applications filed in the United States on or after that effective date, with provisions relating to earliest filed patent application, see section 534(b)(1), (3) of Pub. L. 103-465, set out as a note under section 154 of this title.

§ 173. Term of design patent

Patents for designs shall be granted for the term of fourteen years from the date of grant.

(July 19, 1952, ch. 950, 66 Stat. 805; Pub. L. 97-247, § 16, Aug. 27, 1982, 96 Stat. 321; Pub. L. 103-465, title V, § 532(c)(3), Dec. 8, 1994, 108 Stat. 4987.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 77 (R.S. 4931). Language is changed slightly.

AMENDMENTS

1994—Pub. L. 103-465 inserted “from the date of grant” after “years”.

1982—Pub. L. 97-247 substituted “Patents for designs shall be granted for the term of fourteen years” for “Patents for designs may be granted for the term of three years and six months, or for seven years, or for fourteen years, as the applicant, in his application, elects”.