under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

§ 184. Filing of application in foreign country

Except when authorized by a license obtained from the Commissioner of Patents a person shall not file or cause or authorize to be filed in any foreign country prior to six months after filing in the United States an application for patent or for the registration of a utility model, industrial design, or model in respect of an invention made in this country. A license shall not be granted with respect to an invention subject to an order issued by the Commissioner of Patents pursuant to section 181 of this title without the concurrence of the head of the departments and the chief officers of the agencies who caused the order to be issued. The license may be granted retroactively where an application has been filed abroad through error and without deceptive intent and the application does not disclose an invention within the scope of section 181 of this title.

The term ''application'' when used in this chapter includes applications and any modifications, amendments, or supplements thereto, or divisions thereof.

The scope of a license shall permit subsequent modifications, amendments, and supplements containing additional subject matter if the application upon which the request for the license is based is not, or was not, required to be made available for inspection under section 181 of this title and if such modifications, amendments, and supplements do not change the general nature of the invention in a manner which would require such application to be made available for inspection under such section 181. In any case in which a license is not, or was not, required in order to file an application in any foreign country, such subsequent modifications, amendments, and supplements may be made, without a license, to the application filed in the foreign country if the United States application was not required to be made available for inspection under section 181 and if such modifications, amendments, and supplements do not, or did not, change the general nature of the invention in a manner which would require the United States application to have been made available for inspection under such section 181.

(July 19, 1952, ch. 950, 66 Stat. 807; Pub. L. 100–418, title IX, § 9101(b)(1), Aug. 23, 1988, 102 Stat. 1567; Pub. L. 106–113, div. B, § 1000(a)(9) [title IV, § 4732(a)(10)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A–582.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 154 (Feb. 1, 1952, ch. 4, § 4, 66 Stat. 5).

Language is changed.

AMENDMENTS

1999—Pub. L. 106–113 substituted ''Commissioner of Patents'' for ''Commissioner'' two places in first par.

1988—Pub. L. 100–418, § 9101(b)(1)(A), substituted ''filed abroad through error and without deceptive intent'' for ''inadvertently filed abroad'' in first par.

Pub. L. 100–418, § 9101(b)(1)(B), added third par. relating to scope of a license.

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 OF 1988 AMENDMENT

Section 9101(d) of Pub. L. 100–418 provided that:

''(1) Subject to paragraphs (2), (3), and (4) of this subsection, the amendments made by this section [amending sections 184 to 186 of this title] shall apply to all United States patents granted before, on, or after the date of enactment of this section [Aug. 23, 1988], to all applications for United States patents pending on or filed after such date of enactment, and to all licenses under section 184 granted before, on, or after the date of enactment of this section.

''(2) The amendments made by this section shall not affect any final decision made by a court or the Patent and Trademark Office before the date of enactment of this section [Aug. 23, 1988] with respect to a patent or application for patent, if no appeal from such decision is pending and the time for filing an appeal has expired.

''(3) No United States patent granted before the date of enactment of this section [Aug. 23, 1988] shall abridge or affect the right of any person or his successors in business who made, purchased, or used, prior to such date of enactment, anything protected by the patent, to continue the use of, or to sell to others to be used or sold, the specific thing so made, purchased, or used, if the patent claims were invalid or otherwise unenforceable on a ground obviated by this section and the person made, purchased, or used the specific thing in reasonable reliance on such invalidity or unenforceability. If a person reasonably relied on such invalidity or unenforceability, the court before which such matter is in question may provide for the continued manufacture, use, or sale of the thing made, purchased, or used as specified, or for the manufacture, use, or sale of which substantial preparation was made before the date of enactment of this section, and it may also provide for the continued practice of any process practiced, or for the practice of which substantial preparation was made, prior to the date of enactment of this section, to the extent and under such terms as the court deems equitable for the protection of investments made or business commenced before such date of enactment.

''(4) The amendments made by this section shall not affect the right of any party in any case pending in court on the date of enactment of this section [Aug. 23, 1988] to have its rights or liabilities—

''(A) under any patent before the court, or

''(B) under any patent granted after such date of enactment which is related to the patent before the court by deriving priority rights under section 120 or 121 of title 35, United States Code, from a patent or an application for patent common to both patents,

determined on the basis of the substantive law in effect before the date of enactment of this section.''

PROMULGATION OF REGULATIONS

Section 9101(c) of Pub. L. 100–418 directed Commissioner of Patents and Trademarks to prescribe such regulations as necessary to implement the amendments made by section 9101 (amending sections 184 to 186 of this title).

§ 185. Patent barred for filing without license

Notwithstanding any other provisions of law any person, and his successors, assigns, or legal representatives, shall not receive a United

States patent for an invention if that person, or his successors, assigns, or legal representatives shall, without procuring the license prescribed in section 184 of this title, have made, or consented to or assisted another's making, application in a foreign country for a patent or for the registration of a utility model, industrial design, or model in respect of the invention. A United States patent issued to such person, his successors, assigns, or legal representatives shall be invalid, unless the failure to procure such license was through error and without deceptive intent, and the patent does not disclose subject matter within the scope of section 181 of this title.

(July 19, 1952, ch. 950, 66 Stat. 807; Pub. L. 100–418, title IX, §9101(b)(2), Aug. 23, 1988, 102 Stat. 1568; Pub. L. 107–273, div. C, title III, §13206(a)(11), Nov. 2, 2002, 116 Stat. 1904.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §155 (Feb. 1, 1952, ch. 4, §5, 66 Stat. 5).
Language is changed.

AMENDMENTS

2002—Pub. L. 107–273 struck out second period at end.
1988—Pub. L. 100–418 inserted before period at end ", unless the failure to procure such license was through error and without deceptive intent, and the patent does not disclose subject matter within the scope of section 181 of this title."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 applicable, subject to certain qualifications and exceptions, to all United States patents, and to all licenses under section 184 of this title, regardless of the date such patents or licenses are granted, and to all applications for such patents pending on or filed after Aug. 23, 1988, see section 9101(d) of Pub. L. 100–418, set out as a note under section 184 of this title.

§ 186. Penalty

Whoever, during the period or periods of time an invention has been ordered to be kept secret and the grant of a patent thereon withheld pursuant to section 181 of this title, shall, with knowledge of such order and without due authorization, willfully publish or disclose or authorize or cause to be published or disclosed the invention, or material information with respect thereto, or whoever willfully, in violation of the provisions of section 184 of this title, shall file or cause or authorize to be filed in any foreign country an application for patent or for the registration of a utility model, industrial design, or model in respect of any invention made in the United States, shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than two years, or both.

(July 19, 1952, ch. 950, 66 Stat. 807; Pub. L. 100–418, title IX, §9101(b)(3), Aug. 23, 1988, 102 Stat. 1568.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §156 (Feb. 1, 1952, ch. 4, §6, 66 Stat. 5, 6).
Language is changed.

AMENDMENTS

1988—Pub. L. 100–418, which directed the insertion of "willfully" after second reference to "whoever", was executed by making the insertion after "or whoever", as the probable intent of Congress.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 applicable, subject to certain qualifications and exceptions, to all United States patents, and to all licenses under section 184 of this title, regardless of the date such patents or licenses are granted, and to all applications for such patents pending on or filed after Aug. 23, 1988, see section 9101(d) of Pub. L. 100–418, set out as a note under section 184 of this title.

§ 187. Nonapplicability to certain persons

The prohibitions and penalties of this chapter shall not apply to any officer or agent of the United States acting within the scope of his authority, nor to any person acting upon his written instructions or permission.

(July 19, 1952, ch. 950, 66 Stat. 808.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §157 (Feb. 1, 1952, ch. 4, §7, 66 Stat. 6).
Language is changed.

§ 188. Rules and regulations, delegation of power

The Atomic Energy Commission, the Secretary of a defense department, the chief officer of any other department or agency of the Government designated by the President as a defense agency of the United States, and the Secretary of Commerce, may separately issue rules and regulations to enable the respective department or agency to carry out the provisions of this chapter, and may delegate any power conferred by this chapter.

(July 19, 1952, ch. 950, 66 Stat. 808.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §158 (Feb. 1, 1952, ch. 4, §8, 66 Stat. 6).
Language is changed.

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of Title 42, The Public Health and Welfare. See, also, Transfer of Functions notes set out under those sections.

DEFENSE AGENCIES

Department of Justice designated as a defense agency of United States for purposes of this chapter by Executive Order No. 10457, May 27, 1953, 18 F.R. 3083.

CHAPTER 18—PATENT RIGHTS IN INVENTIONS MADE WITH FEDERAL ASSISTANCE

Sec.
200. Policy and objective.
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AMENDMENTS

2000—Pub. L. 106–404, §4(b), Nov. 1, 2000, 114 Stat. 1744, substituted "Licensing federally owned inventions" for