

- (1) by the applicant for the extension, or
 (2) by the Director,

to comply with the requirements of such section shall be a defense in any action involving the infringement of a patent during the period of the extension of its term and shall be pleaded. A due diligence determination under section 156(d)(2) is not subject to review in such an action.

(July 19, 1952, ch. 950, 66 Stat. 812; Pub. L. 89-83, § 10, July 24, 1965, 79 Stat. 261; Pub. L. 94-131, § 10, Nov. 14, 1975, 89 Stat. 692; Pub. L. 97-164, title I, § 161(7), Apr. 2, 1982, 96 Stat. 49; Pub. L. 98-417, title II, § 203, Sept. 24, 1984, 98 Stat. 1603; Pub. L. 102-572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 104-41, § 2, Nov. 1, 1995, 109 Stat. 352; Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, §§ 4402(b)(1), 4732(a)(10)(A)], Nov. 29, 1999, 113 Stat. 1536, 1501A-560, 1501A-582; Pub. L. 107-273, div. C, title III, § 13206(b)(1)(B), (4), Nov. 2, 2002, 116 Stat. 1906.)

HISTORICAL AND REVISION NOTES

Derived from Title 35, U.S.C., 1946 ed., § 69 (R.S. 4920, amended (1) Mar. 3, 1897, ch. 391, § 2, 29 Stat. 692, (2) Aug. 5, 1939, ch. 450, § 1, 53 Stat. 1212).

The first paragraph declares the existing presumption of validity of patents.

The five defenses named in R.S. 4920 are omitted and replaced by a broader paragraph specifying defenses in general terms.

The third paragraph, relating to notice of prior patents, publications and uses, is based on part of the last paragraph of R.S. 4920 which was superseded by the Federal Rules of Civil Procedure but which is reinstated with modifications.

AMENDMENTS

2002—Third par. Pub. L. 107-273, § 13206(b)(4), made technical correction to directory language of Pub. L. 106-113, § 1000(a)(9) [title IV, § 4402(b)(1)]. See 1999 Amendment note below.

Pub. L. 107-273, § 13206(b)(1)(B), 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—Third par. Pub. L. 106-113, § 1000(a)(9) [title IV, § 4732(a)(10)(A)], as amended by Pub. L. 107-273, § 13206(b)(1)(B), substituted “(2) by the Director,” for “(2) by the Commissioner.”

Pub. L. 106-113, § 1000(a)(9) [title IV, § 4402(b)(1)], as amended by Pub. L. 107-273, § 13206(b)(4), substituted “154(b) or 156 of this title” for “156 of this title”.

1995—First par. Pub. L. 104-41 inserted after second sentence “Notwithstanding the preceding sentence, if a claim to a composition of matter is held invalid and that claim was the basis of a determination of non-obviousness under section 103(b)(1), the process shall no longer be considered nonobvious solely on the basis of section 103(b)(1).”

1992—Third par. Pub. L. 102-572 substituted “United States Court of Federal Claims” for “United States Claims Court”.

1984—Pub. L. 98-417 inserted provision at end that the invalidity of the extension of a patent term or any portion thereof under section 156 of this title because of the material failure by the applicant for the extension, or by the Commissioner, to comply with the requirements of such section shall be a defense in any action involving the infringement of a patent during the period of the extension of its term and shall be pleaded, and that a due diligence determination under section 156(d)(2) is not subject to review in such an action.

1982—Third par. Pub. L. 97-164 substituted “Claims Court” for “Court of Claims”.

1975—First par. Pub. L. 94-131 made presumption of validity applicable to claim of a patent in multiple de-

pendent form and multiple dependent claims and substituted “asserting such invalidity” for “asserting it”.

1965—Pub. L. 89-83 required each claim of a patent (whether in independent or dependent form) to be presumed valid independently of the validity of other claims and required dependent claims to be presumed valid even though dependent upon an invalid claim.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 1000(a)(9) [title IV, § 4402(b)(1)] of Pub. L. 106-113 effective on date that is 6 months after Nov. 29, 1999, and, except for design patent application filed under chapter 16 of this title, applicable to any application filed on or after such date, see section 1000(a)(9) [title IV, § 4405(a)] of Pub. L. 106-113, set out as a note under section 154 of this title.

Amendment by section 1000(a)(9) [title IV, § 4732(a)(10)(A)] of 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 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note 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.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-131 effective Jan. 24, 1978, and applicable on and after that date to patent applications filed in the United States and to international applications, where applicable, see section 11 of Pub. L. 94-131, set out as an Effective Date note under section 351 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89-83 effective 3 months after July 24, 1965, see section 7(a) of Pub. L. 89-83, set out as a note under section 41 of this title.

§ 283. Injunction

The several courts having jurisdiction of cases under this title may grant injunctions in accordance with the principles of equity to prevent the violation of any right secured by patent, on such terms as the court deems reasonable.

(July 19, 1952, ch. 950, 66 Stat. 812.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 70, part (R.S. 4921, amended (1) Mar. 3, 1897, ch. 391, § 6, 29 Stat. 694, (2) Feb. 18, 1922, ch. 58, § 8, 42 Stat. 392, (3) Aug. 1, 1946, ch. 726, § 1, 60 Stat. 778).

This section is the same as the provision which opens R.S. 4921 with minor changes in language.

§ 284. Damages

Upon finding for the claimant the court shall award the claimant damages adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use made of the invention by the infringer, together with interest and costs as fixed by the court.

When the damages are not found by a jury, the court shall assess them. In either event the court may increase the damages up to three times the amount found or assessed. Increased