

“(e) Nothing contained in Title 35, as enacted by section 1 hereof, shall operate to nullify any judicial finding prior to the effective date of this Act on the validity of any patent by a court of competent jurisdiction.

“(f) Nothing in Title 35, as enacted by section 1 hereof, shall affect any provision of the Atomic Energy Act of 1946 (Aug. 1, 1946, ch. 724, 60 Stat. 755) [§2011 et seq. of Title 42, The Public Health and Welfare].

“(g) The period of one year specified in section 4 of Title 35 as enacted by section 1 hereof shall not apply in the case of applications filed before the effective date of this Act.

“(h) The repeal of sections 1–9, 11, 12 of the Act of Congress approved February 1, 1952 (ch. 4, 66 Stat. 3) [sections 151 to 159 of former Title 35], shall not affect any rights or liabilities existing on the date of approval of this Act [July 19, 1952]. An order of secrecy issued under or in effect under the repealed Act and in effect on the date of approval of this Act, shall be considered as issued under this Act, and any claims arising under the repealed Act or subject to presentation and determination pursuant thereto and unsettled as of the effective date of this Act, may be presented and determined pursuant to the provisions of this Act [this title].”

REPEALS

Section 5 of act July 19, 1952, ch. 950, 66 Stat. 815, repealed the sections or parts of sections of the Revised Statutes or Statutes at Large codified in this Act with the proviso that “Any rights or liabilities now existing under such sections or parts thereof shall not be affected by this repeal.”

TITLE REFERRED TO IN OTHER SECTIONS

This title is referred to in title 11 section 101; title 15 sections 278n, 3703; title 17 section 912; title 42 section 12002.

PART I—PATENT AND TRADEMARK OFFICE

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AMENDMENTS

1991—Pub. L. 102–204, §5(d)(2)(D), Dec. 10, 1991, 105 Stat. 1640, substituted “before” for “Before the” in chapter 3 heading and inserted “; Funding; Search Systems” after “Fees” in chapter 4 heading.

1975—Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949, substituted “PATENT AND TRADEMARK OFFICE” for “PATENT OFFICE” in part heading and in headings for chapters 2 and 3.

CHAPTER 1—ESTABLISHMENT, OFFICERS, FUNCTIONS

Sec.	
1.	Establishment.
2.	Seal.
3.	Officers and employees.
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[5.	Repealed.]
6.	Duties of Commissioner.
7.	Board of Patent Appeals and Interferences.
8.	Library.
9.	Classification of patents.
10.	Certified copies of records.
11.	Publications.

<sup>1</sup> So in original. Probably should be capitalized.

Sec.	
12.	Exchange of copies of patents with foreign countries.
13.	Copies of patents for public libraries.
14.	Annual report to Congress.

AMENDMENTS

1984—Pub. L. 98–622, title II, §201(b), Nov. 8, 1984, 98 Stat. 3386, substituted “Patent Appeals and Interferences” for “Appeals” in item 7.

1972—Pub. L. 92–310, title II, §208(b), June 6, 1972, 86 Stat. 203, struck out item 5 “Bond of Commissioner and other officers”.

CROSS REFERENCES

Access to facilities for study, research and illustration in the Patent and Trademark Office, see section 91 of Title 20, Education.

Audit of accounts, see section 3523 of Title 31, Money and Finance.

Constitutional provisions, see Const. Art. 1, §8, cl. 8. Department of Commerce, jurisdiction and supervision of the Patent and Trademark Office, see section 1511 of Title 15, Commerce and Trade.

Records, books, etc., of Patent and Trademark Office, admissibility of copies as evidence, see section 1744 of Title 28, Judiciary and Judicial Procedure.

§ 1. Establishment

The Patent and Trademark Office shall continue as an office in the Department of Commerce, where records, books, drawings, specifications, and other papers and things pertaining to patents and to trademark registrations shall be kept and preserved, except as otherwise provided by law.

(July 19, 1952, ch. 950, 66 Stat. 792; Jan. 2, 1975, Pub. L. 93–596, §1, 88 Stat. 1949.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §1 (R.S. 475 and Executive Order 4175, Mar. 17, 1925).

The word “all” is omitted from the corresponding section of the existing statute and “except as otherwise provided by law” added, since some old records are kept in the National Archives, see 44 U.S.C., 1946 ed., ch. 8A.

The word “models” has been omitted to remove emphasis on models since they are no longer generally required. They are included by the word “things.”

The phrase “and to trade-mark registrations” is added. There is no enactment corresponding to this section in the trade-mark law. The original chapter of the Revised Statutes containing this section deals with the Patent Office as such in its administration of trademarks as well as patents. This is explicitly brought out in some of the corresponding sections of the present chapter. Changes in language are made.

AMENDMENTS

1975—Pub. L. 93–596 substituted “Patent and Trademark Office” for “Patent Office”.

CHANGE OF NAME

Section 3 of Pub. L. 93–596 provided that: “The terms ‘Patent Office’ and ‘Commissioner of Patents’ in all laws of the United States shall mean ‘Patent and Trademark Office’ and ‘Commissioner of Patents and Trademarks’, respectively.”

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of Title 15, Commerce and Trade.

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–418, §9001, Aug. 23, 1988, 102 Stat. 1563, provided that: “This subtitle [subtitle A (§§9001–9007)] of

title IX of Pub. L. 100-418, enacting section 295 of this title, amending sections 154, 271, and 287 of this title, and enacting provisions set out as notes under section 271 of this title] may be cited as the 'Process Patent Amendments Act of 1988'."

Pub. L. 100-418, title IX, §9101(a), Aug. 23, 1988, 102 Stat. 1567, provided that: "This section [amending sections 184 to 186 of this title and enacting provisions set out as notes under section 184 of this title] may be cited as the 'Patent Law Foreign Filing Amendments Act of 1988'."

#### SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-622, §1, Nov. 8, 1984, 98 Stat. 3383, provided that: "This Act [enacting section 157 of this title, amending sections 3, 7, 41, 103, 104, 116, 120, 134, 135, 141, 145, 146, 271, 305, 351, 361, 362, 365 to 368, 371 to 373, and 376 of this title, section 1295 of Title 28, Judiciary and Judicial Procedure, and sections 2182 and 2457 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under sections 7, 41, 103, 157, and 351 of this title] may be cited as the 'Patent Law Amendments Act of 1984'."

#### FEDERAL AGENCY STATUS FOR PATENT AND TRADEMARK OFFICE

Pub. L. 101-508, title X, §10102, Nov. 5, 1990, 104 Stat. 1388-392, provided that: "For the purposes of Federal law, the Patent and Trademark Office shall be considered a Federal agency. In particular, the Patent and Trademark Office shall be subject to all Federal laws pertaining to the procurement of goods and services that would apply to a Federal agency using appropriated funds, including the Federal Property and Administrative Services Act of 1949 [see Short Title note set out under section 471 of Title 40, Public Buildings, Property, and Works] and the Office of Federal Procurement Policy Act [41 U.S.C. 401 et seq.]."

### § 2. Seal

The Patent and Trademark Office shall have a seal with which letters patent, certificates of trade-mark registrations, and papers issued from the Office shall be authenticated.

(July 19, 1952, ch. 950, 66 Stat. 792; Jan. 2, 1975, Pub. L. 93-596, §1, 88 Stat. 1949.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §3 (R.S. 478). "Certificates of trade-mark registrations" is added, see note under section 1. Changes in language are made and the specific date eliminated.

#### AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

#### EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

#### CROSS REFERENCES

Patents issued under seal of Patent and Trademark Office, see section 153 of this title.

### § 3. Officers and employees

(a) There shall be in the Patent and Trademark Office a Commissioner of Patents and Trademarks, a Deputy Commissioner, two Assistant Commissioners, and examiners-in-chief appointed under section 7 of this title. The Deputy Commissioner, or, in the event of a vacancy in that office, the Assistant Commissioner senior in date of appointment shall fill the office of

Commissioner during a vacancy in that office until the Commissioner is appointed and takes office. The Commissioner of Patents and Trademarks, the Deputy Commissioner, and the Assistant Commissioners shall be appointed by the President, by and with the advice and consent of the Senate. The Secretary of Commerce, upon the nomination of the Commissioner, in accordance with law shall appoint all other officers and employees.

(b) The Secretary of Commerce may vest in himself the functions of the Patent and Trademark Office and its officers and employees specified in this title and may from time to time authorize their performance by any other officer or employee.

(c) The Secretary of Commerce is authorized to fix the per annum rate of basic compensation of each examiner-in-chief in the Patent and Trademark Office at not in excess of the maximum scheduled rate provided for positions in grade 17 of the General Schedule of the Classification Act of 1949, as amended.<sup>1</sup>

(d) The Commissioner of Patents and Trademarks shall be an Assistant Secretary of Commerce and shall receive compensation at the rate prescribed by law for Assistant Secretaries of Commerce.

(e) The members of the Trademark Trial and Appeal Board of the Patent and Trademark Office shall each be paid at a rate not to exceed the maximum rate of basic pay payable for GS-16 of the General Schedule under section 5332 of title 5.

(July 19, 1952, ch. 950, 66 Stat. 792; Sept. 6, 1958, Pub. L. 85-933, §1, 72 Stat. 1793; Sept. 23, 1959, Pub. L. 86-370, §1(a), 73 Stat. 650; Aug. 14, 1964, Pub. L. 88-426, title III, §305(26), 78 Stat. 425; Jan. 2, 1975, Pub. L. 93-596, §1, 88 Stat. 1949; Jan. 2, 1975, Pub. L. 93-601, §1, 88 Stat. 1956; Aug. 27, 1982, Pub. L. 97-247, §4, 96 Stat. 319; Oct. 25, 1982, Pub. L. 97-366, §4, 96 Stat. 1760; Nov. 8, 1984, Pub. L. 98-622, title IV, §405, 98 Stat. 3392.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §2 (R.S. 476, amended (1) Feb. 15, 1916, ch. 22, §1, 39 Stat. 8, (2) Feb. 14, 1927, ch. 139, §1, 44 Stat. 1098, (3) Apr. 11, 1930, ch. 132, §1, 46 Stat. 155).

The temporary designation of the assistant commissioner as Commissioner in case of a vacancy in office is added. This will eliminate complications since present applicable general statutes (5 U.S.C., 1946 ed., §7) permit a vacancy to be temporarily filled only for not more than 30 days.

Changes in language are made. "Assistant commissioners" is used in the second sentence (and elsewhere in the bill) as referring to all three assistants.

This entire title is subject to Reorganization Plan No. 5 of 1950 (64 Stat. 1263) which vests all functions of the Patent Office in the Secretary of Commerce and authorizes delegation by him. It has been found impractical to so word the various sections of the title, and a general provision has been inserted as the second paragraph of this section of the bill, leaving the wording of various sections of the title in terms of officers previously specified and to whom the functions presently stand delegated.

#### REFERENCES IN TEXT

The Classification Act of 1949, as amended, referred to in subsec. (c), is act Oct. 28, 1949, ch. 782, 63 Stat. 954,

<sup>1</sup> See References in Text note below.

as amended, which was repealed by Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 632, and reenacted by the first section thereof as chapter 51 (§ 5101 et seq.) and subchapter III (§ 5331 et seq.) of chapter 53 of Title 5, Government Organization and Employees.

#### AMENDMENTS

1984—Subsec. (e). Pub. L. 98-622 added subsec. (e).

1982—Subsec. (a). Pub. L. 97-247 struck out “not more than fifteen” after “two Assistant Commissioners, and”, and inserted “appointed under section 7 of this title” after “examiners-in-chief”.

Subsec. (d). Pub. L. 97-366 added subsec. (d).

1975—Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”, and “Commissioner of Patents and Trademarks” for “Commissioner of Patents”, wherever appearing.

Subsec. (a). Pub. L. 93-601 designated first par. as subsec. (a), redesignated first assistant commissioner as a Deputy Commissioner, granted authority for appointment of not more than fifteen examiners-in-chief to Secretary of Commerce instead of the President, and struck out provision relating to performance by assistant commissioners of duties assigned by Commissioner.

Subsecs. (b), (c). Pub. L. 93-601 designated second and third pars. as subsecs. (b) and (c), respectively.

1964—Pub. L. 88-426 repealed provisions which prescribed annual rate of compensation of Commissioner.

1959—Pub. L. 86-370 authorized Secretary of Commerce to fix compensation of examiners-in-chief.

1958—Pub. L. 85-933 increased number of examiners-in-chief from nine to not more than fifteen and specified annual compensation of Commissioner.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Section 406(b) of Pub. L. 98-622 provided that: “The amendments made by sections 401, 402, and 405 of this Act [amending this section and sections 361, 366, 371, 372, and 376 of this title] shall take effect six months after the date of the enactment of this Act [Nov. 8, 1984].”

#### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-247 effective Aug. 27, 1982, see section 17(a) of Pub. L. 97-247, set out as a note under section 41 of this title.

#### EFFECTIVE DATE OF 1975 AMENDMENTS

Section 4(b) of Pub. L. 93-601 provided that: “This Act [amending this section and sections 7 and 151 of this title and enacting provisions set out as a note under section 151 of this title] shall be effective upon enactment [Jan. 2, 1975]. Examiners-in-chief in office on the date of enactment shall continue in office under and in accordance with their then existing appointments.”

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

#### EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-426 effective on first day of first pay period which begins on or after July 1, 1964, except to the extent provided in section 501(c) of Pub. L. 88-426, see section 501 of Pub. L. 88-426.

#### EFFECTIVE DATE OF 1959 AMENDMENT

Section 7(b) of Pub. L. 86-370 provided that: “Sections 1 [amending this section, section 7 of this title, and provisions set out as a note below], 3 [amending sections 2205 and 2208 of former Title 5, Executive Departments and Government Officers and Employees], and 6 [amending section 1082 of former Title 5 and section 903 of Title 20, Education] of this Act shall become effective on the first day of the first pay period which begins after the date of enactment of this Act [Sept. 23, 1959].” Such section 7(b) was repealed by Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 660.

#### REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

#### EXISTING POSITIONS, COMPENSATION, AND APPOINTMENTS UNAFFECTED BY PUB. L. 86-370 UNTIL ACTION TAKEN UNDER AMENDMENTS

Section 1(c) of Pub. L. 86-370 provided that: “The amendments made by this section [amending sections 1 and 7 of this title] shall not affect—

“(1) any position of examiner-in-chief or designated examiner-in-chief existing immediately prior to the effective date of this section [see Effective Date of 1959 Amendment note set out above], or

“(2) any incumbent of any such position, his appointment thereto, his rate of compensation, or his right to receive such compensation, until appropriate action is taken under authority of such amendments.”

#### CROSS REFERENCES

Classification and compensation of civil service employees, see section 5101 et seq. of Title 5, Government Organization and Employees.

Compensation of Commissioner, see section 5316 of Title 5.

Employment of clerks and employees in governmental departments, see section 3101 of Title 5.

#### § 4. Restrictions on officers and employees as to interest in patents

Officers and employees of the Patent and Trademark Office shall be incapable, during the period of their appointments and for one year thereafter, of applying for a patent and of acquiring, directly or indirectly, except by inheritance or bequest, any patent or any right or interest in any patent, issued or to be issued by the Office. In patents applied for thereafter they shall not be entitled to any priority date earlier than one year after the termination of their appointment.

(July 19, 1952, ch. 950, 66 Stat. 793; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 4 (R.S. 480).

The language is revised and inability to apply for a patent, included in the original language, is made explicit.

The period of disability is increased to include one year after leaving the Office.

The further restriction, that no priority date earlier than one year after leaving the Office can be claimed, is added.

The one year period is made inapplicable to applications which may be pending when the revised title goes into effect by section 4(g) of the bill.

#### AMENDMENTS

1975—Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”.

#### EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

#### § 5. Repealed. Pub. L. 92-310, title II, § 208(a), June 6, 1972, 86 Stat. 203]

Section, act July 19, 1952, ch. 950, 66 Stat. 793, related to bond of Commissioner and other officers.

## § 6. Duties of Commissioner

(a) The Commissioner, under the direction of the Secretary of Commerce, shall superintend or perform all duties required by law respecting the granting and issuing of patents and the registration of trademarks; shall have the authority to carry on studies, programs, or exchanges of items or services regarding domestic and international patent and trademark law or the administration of the Patent and Trademark Office, including programs to recognize, identify, assess and forecast the technology of patented inventions and their utility to industry; and shall have charge of property belonging to the Patent and Trademark Office. He may, subject to the approval of the Secretary of Commerce, establish regulations, not inconsistent with law, for the conduct of proceedings in the Patent and Trademark Office.

(b) The Commissioner, under the direction of the Secretary of Commerce, may, in coordination with the Department of State, carry on programs and studies cooperatively with foreign patent offices and international intergovernmental organizations, or may authorize such programs and studies to be carried on, in connection with the performance of duties stated in subsection (a) of this section.

(c) The Commissioner, under the direction of the Secretary of Commerce, may, with the concurrence of the Secretary of State, transfer funds appropriated to the Patent and Trademark Office, not to exceed \$100,000 in any year, to the Department of State for the purpose of making special payments to international intergovernmental organizations for studies and programs for advancing international cooperation concerning patents, trademarks, and related matters. These special payments may be in addition to any other payments or contributions to the international organization and shall not be subject to any limitations imposed by law on the amounts of such other payments or contributions by the Government of the United States.

(July 19, 1952, ch. 950, 66 Stat. 793; Oct. 5, 1971, Pub. L. 92-132, 85 Stat. 364; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949; Nov. 14, 1975, Pub. L. 94-131, § 2, 89 Stat. 690; Aug. 27, 1982, Pub. L. 97-247, §§ 7, 13, 96 Stat. 320, 321; Dec. 10, 1991, Pub. L. 102-204, § 8, 105 Stat. 1641.)

### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 6 (R.S. 481 and 483).

The two sections are combined into one with some changes in language.

“And the registration of trademarks” is added, see note under section 1.

### AMENDMENTS

1991—Subsec. (a). Pub. L. 102-204 substituted “, including programs to recognize, identify, assess and forecast the technology of patented inventions and their utility to industry; and shall have” for “; and shall have”.

1982—Subsec. (a). Pub. L. 97-247, § 13, substituted “, programs, or exchanges of items or services” for “and programs” before “regarding domestic”, and inserted “or the administration of the Patent and Trademark Office” after “trademark law”.

Subsec. (d). Pub. L. 97-247, § 7, struck out subsec. (d) which provided that the Commissioner, under the direc-

tion of the Secretary of Commerce, could, with the concurrence of the Secretary of State, allocate funds appropriated to the Patent Office, to the Department of State for the purpose of payment of the share on the part of the United States to the working capital fund established under the Patent Cooperation Treaty and that contributions to cover the share on the part of the United States of any operating deficits of the International Bureau under the Patent Cooperation Treaty would be included in the annual budget of the Patent Office and could be transferred by the Commissioner, under the direction of the Secretary of Commerce, to the Department of State for the purpose of making payments thereof to the International Bureau.

1975—Subsecs. (a), (c). Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office” wherever appearing.

Subsec. (d). Pub. L. 94-131 added subsec. (d).

1971—Subsec. (a). Pub. L. 92-132 designated existing par. as subsec. (a) and authorized the Commissioner, under direction of Secretary of Commerce, to carry on studies and programs regarding domestic and international patent and trademark laws.

Subsecs. (b), (c). Pub. L. 92-132 added subsecs. (b) and (c).

### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-247 effective Aug. 27, 1982, see section 17(a) of Pub. L. 97-247, set out as a note under section 41 of this title.

### EFFECTIVE DATE OF 1975 AMENDMENTS

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.

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

### USE OF EXCHANGE AGREEMENTS RELATING TO AUTOMATIC DATA PROCESSING RESOURCES PROHIBITED

Pub. L. 102-204, § 6, Dec. 10, 1991, 105 Stat. 1641, provided that: “The Commissioner of Patents and Trademarks may not, during fiscal year 1992, enter into any agreement for the exchange of items or services (as authorized under section 6(a) of title 35, United States Code) relating to automatic data processing resources (including hardware, software and related services, and machine readable data). The preceding sentence shall not apply to an agreement relating to data for automation programs which is entered into with a foreign government or with an international intergovernmental organization.”

Similar provisions were contained in the following prior authorization acts:

Pub. L. 100-703, title I, § 106, Nov. 19, 1988, 102 Stat. 4675.

Pub. L. 99-607, § 6, Nov. 6, 1986, 100 Stat. 3472.

## § 7. Board of Patent Appeals and Interferences

(a) The examiners-in-chief shall be persons of competent legal knowledge and scientific ability, who shall be appointed to the competitive service. The Commissioner, the Deputy Commissioner, the Assistant Commissioners, and the examiners-in-chief shall constitute the Board of Patent Appeals and Interferences.

(b) The Board of Patent Appeals and Interferences shall, on written appeal of an applicant, review adverse decisions of examiners upon applications for patents and shall determine priority and patentability of invention in interferences declared under section 135(a) of this title. Each appeal and interference shall be

heard by at least three members of the Board of Patent Appeals and Interferences, who shall be designated by the Commissioner. Only the Board of Patent Appeals and Interferences has the authority to grant rehearings.

(c) Whenever the Commissioner considers it necessary, in order to keep current the work of the Board of Patent Appeals and Interferences, the Commissioner may designate any patent examiner of the primary examiner grade or higher, having the requisite ability, to serve as examiner-in-chief for periods not exceeding six months each. An examiner so designated shall be qualified to act as a member of the Board of Patent Appeals and Interferences. Not more than one of the members of the Board of Patent Appeals and Interferences hearing an appeal or determining an interference may be an examiner so designated. The Secretary of Commerce is authorized to fix the pay of each designated examiner-in-chief in the Patent and Trademark Office at not to exceed the maximum rate of basic pay payable for grade GS-16 of the General Schedule under section 5332 of title 5. The rate of basic pay of each individual designated examiner-in-chief shall be adjusted, at the close of the period for which that individual was designated to act as examiner-in-chief, to the rate of basic pay which that individual would have been receiving at the close of such period if such designation had not been made.

(July 19, 1952, ch. 950, 66 Stat. 793; Sept. 6, 1958, Pub. L. 85-933, § 2, 72 Stat. 1793; Sept. 23, 1959, Pub. L. 86-370, § 1(b), 73 Stat. 650; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949; Jan. 2, 1975, Pub. L. 93-601, § 2, 88 Stat. 1956; Nov. 8, 1984, Pub. L. 98-622, title II, § 201(a), 98 Stat. 3386.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 7 (R.S. 482, amended (1) Mar. 2, 1927, ch. 273, § 3, 44 Stat. 1335, (2) April 11, 1930, ch. 132, § 2, 46 Stat. 155, (3) Mar. 4, 1950, ch. 50, 64 Stat. 11).

Some changes in language have been made and the reference to interferences, which are no longer considered by the Board of Appeals, has been deleted. Reference to reissues is omitted in view of the general provision in section 251.

#### AMENDMENTS

1984—Pub. L. 98-622 substituted “Board of Patent Appeals and Interferences” for “Board of Patent Appeals” as section catchline.

Subsec. (a). Pub. L. 98-622 designated first two sentences of existing first paragraph as subsec. (a) and substituted “competitive service” for “classified civil service” at end of first sentence, capitalized “Deputy Commissioner” and “Assistant Commissioner” and further substituted “the Board of Patent Appeals and Interferences” for “a Board of Appeals, which on written appeal of the applicant, shall review adverse decisions of examiners upon applications for patents”.

Subsec. (b). Pub. L. 98-622 designated final two sentences of existing first paragraph as subsec. (b) and inserted first sentence, substituted “Board of Patent Appeals and Interferences” for “Board of Patent Appeals” in two places and further substituted “authority” for “sole power” before “to grant rehearings” in third sentence.

Subsec. (c). Pub. L. 98-622 designated existing second paragraph as subsec. (c) and substituted “Board of Patent Appeals and Interferences” for “Board of Patent Appeals” wherever appearing, inserted “or determining an interference” before “may be an examiner so des-

ignated”, substituted “maximum rate of basic pay payable for grade GS-16 of the General Schedule under section 5332 of title 5” for “maximum scheduled rate provided for positions in grade 16 of the General Schedule of the Classification Act of 1949, as amended”, and substituted “rate of basic pay” for “per annum rate of basic compensation” in two places.

1975—Pub. L. 93-601 inserted provisions relating to appointment of the examiners-in-chief under classified civil service, and addition of deputy commissioner to Board of Appeals.

Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”.

1959—Pub. L. 86-370 authorized Secretary of Commerce to fix compensation of designated examiners-in-chief at rates not higher than maximum rate for grade 16 of General Schedule.

1958—Pub. L. 85-933 permitted temporary designees to be paid salary received by permanent examiners-in-chief while so serving and provided for compensation adjustments in their regular classifications following such service.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Section 207 of title II of Pub. L. 98-622 provided that: “Section 206 of this Act [set out as a note below] and the amendments made by this title [amending this section, sections 41, 134, 135, 141, 145, 146, and 305 of this title, section 1295 of Title 28, Judiciary and Judicial Procedure, and sections 2182 and 2457 of Title 42, The Public Health and Welfare] shall take effect three months after the date of the enactment of this Act [Nov. 8, 1984].”

#### EFFECTIVE DATE OF 1975 AMENDMENTS

Amendment by Pub. L. 93-601 effective Jan. 2, 1975, with examiners-in-chief in office on such date to continue with existing appointment, see section 4(b) of Pub. L. 93-601, set out as a note under section 3 of this title.

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

#### EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86-370 effective on first day of first pay period which begins after Sept. 23, 1959, see section 7(b) of Pub. L. 86-370, set out as a note under section 3 of this title.

#### SAVINGS PROVISION

Section 206 of title II of Pub. L. 98-622 provided that: “Any individual who, on the effective date of this title [see Effective Date of 1984 Amendment note above], is an examiner-in-chief of the Board of Patent Appeals of the Patent and Trademark Office or an examiner of interferences of the Board of Patent Interferences of such office shall be entitled to continue in office as a member of the Board of Patent Appeals and Interferences of the Patent and Trademark Office as of such effective date.”

#### REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

#### EXISTING POSITIONS

Existing positions, compensation, and appointments unaffected by amendment by Pub. L. 86-370 until action is taken under such amendment, see note set out under section 3 of this title.

#### CROSS REFERENCES

Appeal to Board of Appeals, see section 134 of this title.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3 of this title.

**§ 8. Library**

The Commissioner shall maintain a library of scientific and other works and periodicals, both foreign and domestic, in the Patent and Trademark Office to aid the officers in the discharge of their duties.

(July 19, 1952, ch. 950, 66 Stat. 793; Jan. 2, 1975, Pub. L. 93-596, §1, 88 Stat. 1949.)

## HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §10 (R.S. 486). Some change in language has been made. "Purchased" is changed to "maintained" to include the existing library and keeping it up by additions. The phrase "and other" is added to include legal works. The last phrase of the corresponding section of the existing statute is omitted as unnecessary.

## AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

## EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

## FEES FOR USE OF SEARCH ROOMS AND LIBRARIES PROHIBITED

For provisions prohibiting Commissioner of Patents and Trademarks from imposing fee for use of public patent or trademark search rooms and libraries, and providing that costs of such rooms and libraries come from amounts appropriated by Congress, see section 4 of Pub. L. 99-607, set out as a note under section 41 of this title.

## CROSS REFERENCES

Library of Patent and Trademark Office, binding of books, see section 501 of Title 44, Public Printing and Documents.

**§ 9. Classification of patents**

The Commissioner may revise and maintain the classification by subject matter of United States letters patent, and such other patents and printed publications as may be necessary or practicable, for the purpose of determining with readiness and accuracy the novelty of inventions for which applications for patent are filed.

(July 19, 1952, ch. 950, 66 Stat. 794.)

## HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §6 note (June 10, 1898, ch. 430, §1, 30 Stat. 440).

Changes in language are made.

**§ 10. Certified copies of records**

The Commissioner may furnish certified copies of specifications and drawings of patents issued by the Patent and Trademark Office, and of other records available either to the public or to the person applying therefor.

(July 19, 1952, ch. 950, 66 Stat. 794; Jan. 2, 1975, Pub. L. 93-596, §1, 88 Stat. 1949.)

## HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §14 (Mar. 3, 1891, ch. 541, §1 (part), 26 Stat. 908, 940).

Reference to other records is added. The fee for certification is omitted as it appears in the table of fees.

## AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

## EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

## CROSS REFERENCES

Fees for certified copies, see section 41 of this title.

**§ 11. Publications**

(a) The Commissioner may print, or cause to be printed, the following:

1. Patents, including specifications and drawings, together with copies of the same. The Patent and Trademark Office may print the headings of the drawings for patents for the purpose of photolithography.

2. Certificates of trade-mark registrations, including statements and drawings, together with copies of the same.

3. The Official Gazette of the United States Patent and Trademark Office.

4. Annual indexes of patents and patentees, and of trade-marks and registrants.

5. Annual volumes of decisions in patent and trade-mark cases.

6. Pamphlet copies of the patent laws and rules of practice, laws and rules relating to trade-marks, and circulars or other publications relating to the business of the Office.

(b) The Commissioner may exchange any of the publications specified in items 3, 4, 5, and 6 of subsection (a) of this section for publications desirable for the use of the Patent and Trademark Office.

(July 19, 1952, ch. 950, 66 Stat. 794; Jan. 2, 1975, Pub. L. 93-596, §1, 88 Stat. 1949.)

## HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §§13 and 16 (R.S. 489; July 9, 1947, ch. 211, §301 (part), 61 Stat. 299, repeated in prior and subsequent appropriation acts).

Section is amplified to list the publications of the Patent Office, based on 44 U.S.C., 1946 ed., §§283, 283a.

The second sentence of item 1 of the revised section is a provision appearing annually in appropriation acts to enable the Patent Office to maintain a small printing press to place headings on drawings before the drawings are reproduced.

Language is changed.

## AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office", wherever appearing.

## EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

## CROSS REFERENCES

Exchange of Official Gazette for scientific or useful publications, see section 481 of Title 40, Public Buildings, Property, and Works.

Printing and publications for Patent and Trademark Office, see sections 1337, 1338 of Title 44, Public Printing and Documents.

### § 12. Exchange of copies of patents with foreign countries

The Commissioner may exchange copies of specifications and drawings of United States patents for those of foreign countries.

(July 19, 1952, ch. 950, 66 Stat. 794.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §§15, and 78, part (Jan. 14, 1915, 38 Stat. 1221; Feb. 18, 1922, ch. 58, §9, proviso in, 42 Stat. 393).

The first act mentioned applies to Canada only, the second to any country; these are consolidated in one section, specific reference to one country not being necessary.

Language is changed.

### § 13. Copies of patents for public libraries

The Commissioner may supply printed copies of specifications and drawings of patents to public libraries in the United States which shall maintain such copies for the use of the public, at the rate for each year's issue established for this purpose in section 41(d) of this title.

(July 19, 1952, ch. 950, 66 Stat. 794; Aug. 27, 1982, Pub. L. 97-247, §15, 96 Stat. 321.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §78, part (R.S. 4934, Feb. 18, 1922, ch. 58, §9, 42 Stat. 389, 393, amended June 15, 1950, ch. 249, 64 Stat. 215).

The proviso in the schedule of fees of the existing statute is made a separate section and some changes in language are made.

#### AMENDMENTS

1982—Pub. L. 97-247 substituted “section 41(d)” for “section 41(a)9”.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-247 effective Aug. 27, 1982, see section 17(a) of Pub. L. 97-247, set out as a note under section 41 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 41 of this title.

### § 14. Annual report to Congress

The Commissioner shall report to Congress annually the moneys received and expended, statistics concerning the work of the Office, and other information relating to the Office as may be useful to the Congress or the public.

(July 19, 1952, ch. 950, 66 Stat. 794.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §20 (R.S. 494).

Language is changed. The lists referred to in the corresponding section of existing statute, and which are omitted from the revised section, are the indexes provided for in section 11(a)4. The month of reporting is omitted. The report contemplated by R.S. 494 has been discontinued since 1925 under authority of 44 U.S.C., 1946 ed., §212.

#### REPORT TO CONGRESS

Pub. L. 100-703, title I, §103(c), Nov. 19, 1988, 102 Stat. 4674, provided that: “The Secretary of Commerce shall, on the day on which the President submits the annual budget to the Congress, provide to the Committees on the Judiciary of the Senate and the House of Representatives—

“(1) a list of patent and trademark fee collections by the Patent and Trademark Office during the preceding fiscal year;

“(2) a list of activities of the Patent and Trademark Office during the preceding fiscal year which were supported by patent fee expenditures, trademark fee expenditures, and appropriations;

“(3) budget plans for significant programs, projects, and activities of the Office, including out-year funding estimates;

“(4) any proposed disposition of surplus fees by the Office; and

“(5) such other information as the committees consider necessary.”

Similar provisions were contained in the following prior authorization act:

Pub. L. 99-607, §3(c), Nov. 6, 1986, 100 Stat. 3471.

#### COMPUTERIZED DATA AND RETRIEVAL SYSTEM; REPORT TO CONGRESS

Pub. L. 96-517, §9, Dec. 12, 1980, 94 Stat. 3028, directed the Commissioner of Patents and Trademarks to report to Congress, within two years after Dec. 12, 1980, a plan to identify, and if necessary develop or have developed, computerized data and retrieval systems equivalent to the latest state of the art which could be applied to all aspects of the operation of the Patent and Trademark Office, and particularly to the patent search file, the patent classification system, and the trademark search file. The report was to specify the cost of implementing the plan, and how rapidly the plan could be implemented by the Patent and Trademark Office, without regard to the availability of future funding.

#### CROSS REFERENCES

Printing and distribution of the report of the Commissioner, see section 1337 of Title 44, Public Printing and Documents.

Provisions applicable to all the Departments, relating to the time of making annual reports, see section 2952 of Title 5, Government Organization and Employees.

## CHAPTER 2—PROCEEDINGS IN THE PATENT AND TRADEMARK OFFICE

#### Sec.

21. Day for taking action falling on Saturday, Sunday, or holiday.<sup>1</sup>
22. Printing of papers filed.
23. Testimony in Patent and Trademark Office cases.
24. Subpoenas, witnesses.
25. Declaration in lieu of oath.
26. Effect of defective execution.

#### AMENDMENTS

1975—Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949, substituted “Patent and Trademark Office” for “Patent Office” in chapter heading and in item 23.

1964—Pub. L. 88-292, §2, Mar. 26, 1964, 78 Stat. 171, added items 25 and 26.

### § 21. Filing date and day for taking action

(a) The Commissioner may by rule prescribe that any paper or fee required to be filed in the Patent and Trademark Office will be considered filed in the Office on the date on which it was deposited with the United States Postal Service or would have been deposited with the United States Postal Service but for postal service interruptions or emergencies designated by the Commissioner.

(b) When the day, or the last day, for taking any action or paying any fee in the United

<sup>1</sup> Section catchline amended by Pub. L. 97-247 without corresponding amendment of chapter analysis.

States Patent and Trademark Office falls on Saturday, Sunday, or a Federal holiday within the District of Columbia, the action may be taken, or the fee paid, on the next succeeding secular or business day.

(July 19, 1952, ch. 950, 66 Stat. 794; Jan. 2, 1975, Pub. L. 93-596, §1, 88 Stat. 1949; Aug. 27, 1982, Pub. L. 97-247, §12, 96 Stat. 321.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §21 (Mar. 2, 1927, ch. 273, §14, 44 Stat. 1337).

“Fixed by statute” is omitted from the corresponding section of the existing statute as unnecessary. Saturday is added as a day on which action need not be taken.

#### AMENDMENTS

1982—Pub. L. 97-247 substituted “Filing date and day for taking action” for “Day for taking action falling on Saturday, Sunday, or holiday” as section catchline, added subsec. (a), redesignated existing provisions as subsec. (b) and inserted “Federal” after “Sunday, or a”.

1975—Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-247 effective six months after Aug. 27, 1982, see section 17(c) of Pub. L. 97-247, set out as an Effective Date note under section 294 of this title.

#### EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

#### EMERGENCY RELIEF FROM POSTAL SITUATION AFFECTING PATENT CASES

Relief as to filing date of patent application or patent and excusal of delayed fees or actions affected by postal situation beginning on Mar. 18, 1970, and ending on or about Mar. 30, 1970, see note set out under section 111 of this title.

#### CROSS REFERENCES

Federal holidays, see section 6103 of Title 5, Government Organization and Employees.

### § 22. Printing of papers filed

The Commissioner may require papers filed in the Patent and Trademark Office to be printed or typewritten.

(July 19, 1952, ch. 950, 66 Stat. 795; Jan. 2, 1975, Pub. L. 93-596, §1, 88 Stat. 1949.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §12 (R.S. 488). Language is changed and “or typewritten” is added after “printed”.

#### AMENDMENTS

1975—Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”.

#### EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

### § 23. Testimony in Patent and Trademark Office cases

The Commissioner may establish rules for taking affidavits and depositions required in

cases in the Patent and Trademark Office. Any officer authorized by law to take depositions to be used in the courts of the United States, or of the State where he resides, may take such affidavits and depositions.

(July 19, 1952, ch. 950, 66 Stat. 795; Jan. 2, 1975, Pub. L. 93-596, §1, 88 Stat. 1949.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §53 (R.S. 4905).

This section is placed in part 1 since it relates to trade-mark cases in the Patent Office as well as to patent cases.

Language is changed.

#### AMENDMENTS

1975—Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office” in section catchline and text.

#### EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

#### FEDERAL RULES OF CIVIL PROCEDURE

Persons before whom depositions may be taken, see rule 28, Title 28, Appendix, Judiciary and Judicial Procedure.

#### CROSS REFERENCES

Regulations for the conduct of proceedings in Patent and Trademark Office, establishment of, see section 6 of this title.

### § 24. Subpoenas, witnesses

The clerk of any United States court for the district wherein testimony is to be taken for use in any contested case in the Patent and Trademark Office, shall, upon the application of any party thereto, issue a subpoena for any witness residing or being within such district, commanding him to appear and testify before an officer in such district authorized to take depositions and affidavits, at the time and place stated in the subpoena. The provisions of the Federal Rules of Civil Procedure relating to the attendance of witnesses and to the production of documents and things shall apply to contested cases in the Patent and Trademark Office.

Every witness subpoenaed and in attendance shall be allowed the fees and traveling expenses allowed to witnesses attending the United States district courts.

A judge of a court whose clerk issued a subpoena may enforce obedience to the process or punish disobedience as in other like cases, on proof that a witness, served with such subpoena, neglected or refused to appear or to testify. No witness shall be deemed guilty of contempt for disobeying such subpoena unless his fees and traveling expenses in going to, and returning from, and one day's attendance at the place of examination, are paid or tendered him at the time of the service of the subpoena; nor for refusing to disclose any secret matter except upon appropriate order of the court which issued the subpoena.

(July 19, 1952, ch. 950, 66 Stat. 795; Jan. 2, 1975, Pub. L. 93-596, §1, 88 Stat. 1949.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §§54, 55 and 56 (R.S. 4906, amended Feb. 18, 1922, ch. 58, §7, 42 Stat. 389, 391-2; R.S. 4907; R.S. 4908).

Three sections of the existing statute are combined with some changes in language and placed in part 1 since they apply to trade-mark cases in the Patent Office as well as to patent cases. Reference to a repealed statute in the first paragraph is replaced by reference to the Federal Rules of Civil Procedure and certain rules are made applicable.

#### REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

#### AMENDMENTS

1975—Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office” in two places.

#### EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

#### FEDERAL RULES OF CIVIL PROCEDURE

Subpoena, see rule 45, Title 28, Appendix, Judiciary and Judicial Procedure.

#### CROSS REFERENCES

Fees of witnesses, see sections 1821 and 1825 of Title 28, Judiciary and Judicial Procedure.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 25 section 374.

### § 25. Declaration in lieu of oath

(a) The Commissioner may by rule prescribe that any document to be filed in the Patent and Trademark Office and which is required by any law, rule, or other regulation to be under oath may be subscribed to by a written declaration in such form as the Commissioner may prescribe, such declaration to be in lieu of the oath otherwise required.

(b) Whenever such written declaration is used, the document must warn the declarant that willful false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. 1001).

(Added Pub. L. 88-292, §1, Mar. 26, 1964, 78 Stat. 171; amended Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949.)

#### AMENDMENTS

1975—Subsec. (a). Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”.

#### EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

### § 26. Effect of defective execution

Any document to be filed in the Patent and Trademark Office and which is required by any law, rule, or other regulation to be executed in a specified manner may be provisionally accepted by the Commissioner despite a defective execution, provided a properly executed document is submitted within such time as may be prescribed.

(Added Pub. L. 88-292, §1, Mar. 26, 1964, 78 Stat. 171; amended Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949.)

#### AMENDMENTS

1975—Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”.

#### EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

## CHAPTER 3—PRACTICE BEFORE PATENT AND TRADEMARK OFFICE

#### Sec.

- 31. Regulations for agents and attorneys.
- 32. Suspension or exclusion from practice.
- 33. Unauthorized representation as practitioner.

#### AMENDMENTS

1975—Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949, substituted “PATENT AND TRADEMARK OFFICE” for “PATENT OFFICE” in chapter heading.

#### CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 5 section 500.

### § 31. Regulations for agents and attorneys

The Commissioner, subject to the approval of the Secretary of Commerce, may prescribe regulations governing the recognition and conduct of agents, attorneys, or other persons representing applicants or other parties before the Patent and Trademark Office, and may require them, before being recognized as representatives of applicants or other persons, to show that they are of good moral character and reputation and are possessed of the necessary qualifications to render to applicants or other persons valuable service, advice, and assistance in the presentation or prosecution of their applications or other business before the Office.

(July 19, 1952, ch. 950, 66 Stat. 795; Jan. 2, 1975, Pub. L. 93-596, §1, 88 Stat. 1949.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §11 (R.S. 487, amended Feb. 18, 1922, ch. 58, §3, 42 Stat. 390).

The present statute is divided into two sections, 31 and 32.

Changes in language are made.

#### AMENDMENTS

1975—Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”.

#### EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 32 of this title; title 5 section 500.

### § 32. Suspension or exclusion from practice

The Commissioner may, after notice and opportunity for a hearing, suspend or exclude, either generally or in any particular case, from further practice before the Patent and Trademark Office, any person, agent, or attorney shown to be incompetent or disreputable, or guilty of gross misconduct, or who does not comply with the regulations established under section 31 of this title, or who shall, by word,

circular, letter, or advertising, with intent to defraud in any manner, deceive, mislead, or threaten any applicant or prospective applicant, or other person having immediate or prospective business before the Office. The reasons for any such suspension or exclusion shall be duly recorded. The United States District Court for the District of Columbia, under such conditions and upon such proceedings as it by its rules determines, may review the action of the Commissioner upon the petition of the person so refused recognition or so suspended or excluded.

(July 19, 1952, ch. 950, 66 Stat. 795; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §11 (R.S. 487, amended Feb. 18, 1922, ch. 58, §3, 42 Stat. 390). See note under section 31.

#### AMENDMENTS

1975—Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”.

#### EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 500.

### § 33. Unauthorized representation as practitioner

Whoever, not being recognized to practice before the Patent and Trademark Office, holds himself out or permits himself to be held out as so recognized, or as being qualified to prepare or prosecute applications for patent, shall be fined not more than \$1,000 for each offense.

(July 19, 1952, ch. 950, 66 Stat. 796; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §11a (May 9, 1938, ch. 188, 52 Stat. 342).

This is a criminal statute. The language has been considerably simplified and the upper limit of the penalty is increased.

#### AMENDMENTS

1975—Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”.

#### EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a under section 1111 of Title 15, Commerce and Trade.

#### CROSS REFERENCES

Advertising practice before departments or offices of Government, see section 501 of Title 5, Government Organization and Employees.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 500.

## CHAPTER 4—PATENT FEES; FUNDING; SEARCH SYSTEMS

Sec.

41. Patent fees; patent and trademark search systems.  
42. Patent and Trademark Office funding.

Sec.

#### AMENDMENTS

1991—Pub. L. 102-204, §5(d)(2)(B), (C), Dec. 10, 1991, 105 Stat. 1640, inserted “; FUNDING; SEARCH SYSTEMS” after “FEES” in chapter heading, inserted “; patent and trademark search systems” after “fees” in item 41, and substituted “Patent and Trademark Office funding” for “Payment of patent fees; return of excess amounts” in item 42.

### § 41. Patent fees; patent and trademark search systems

(a) The Commissioner shall charge the following fees:

(1)(A) On filing each application for an original patent, except in design or plant cases, \$500.

(B) In addition, on filing or on presentation at any other time, \$52 for each claim in independent form which is in excess of 3, \$14 for each claim (whether independent or dependent) which is in excess of 20, and \$160 for each application containing a multiple dependent claim.

(C) On filing each provisional application for an original patent, \$150.

(2) For issuing each original or reissue patent, except in design or plant cases, \$820.

(3) In design and plant cases—

(A) on filing each design application, \$200;

(B) on filing each plant application, \$330;

(C) on issuing each design patent, \$290; and

(D) on issuing each plant patent, \$410.

(4)(A) On filing each application for the reissue of a patent, \$500.

(B) In addition, on filing or on presentation at any other time, \$52 for each claim in independent form which is in excess of the number of independent claims of the original patent, and \$14 for each claim (whether independent or dependent) which is in excess of 20 and also in excess of the number of claims of the original patent.

(5) On filing each disclaimer, \$78.

(6)(A) On filing an appeal from the examiner to the Board of Patent Appeals and Interferences, \$190.

(B) In addition, on filing a brief in support of the appeal, \$190, and on requesting an oral hearing in the appeal before the Board of Patent Appeals and Interferences, \$160.

(7) On filing each petition for the revival of an unintentionally abandoned application for a patent or for the unintentionally delayed payment of the fee for issuing each patent, \$820, unless the petition is filed under section 133 or 151 of this title, in which case the fee shall be \$78.

(8) For petitions for 1-month extensions of time to take actions required by the Commissioner in an application—

(A) On<sup>1</sup> filing a first petition, \$78;

(B) on filing a second petition, \$172; and

(C) on filing a third petition or subsequent petition, \$340.

(9) Basic national fee for an international application where the Patent and Trademark Office was the International Preliminary Ex-

<sup>1</sup> So in original. Probably should not be capitalized.

aming Authority and the International Searching Authority, \$450.

(10) Basic national fee for an international application where the Patent and Trademark Office was the International Searching Authority but not the International Preliminary Examining Authority, \$500.

(11) Basic national fee for an international application where the Patent and Trademark Office was neither the International Searching Authority nor the International Preliminary Examining Authority, \$670.

(12) Basic national fee for an international application where the international preliminary examination has been paid to the Patent and Trademark Office, and the international preliminary examination report states that the provisions of Article 33(2), (3), and (4) of the Patent Cooperation Treaty have been satisfied for all claims in the application entering the national stage, \$66.

(13) For filing or later presentation of each independent claim in the national stage of an international application in excess of 3, \$52.

(14) For filing or later presentation of each claim (whether independent or dependent) in a national stage of an international application in excess of 20, \$14.

(15) For each national stage of an international application containing a multiple dependent claim, \$160.

For the purpose of computing fees, a multiple dependent claim as referred to in section 112 of this title or any claim depending therefrom shall be considered as separate dependent claims in accordance with the number of claims to which reference is made. Errors in payment of the additional fees may be rectified in accordance with regulations of the Commissioner.

(b) The Commissioner shall charge the following fees for maintaining in force all patents based on applications filed on or after December 12, 1980:

- (1) 3 years and 6 months after grant, \$650.
- (2) 7 years and 6 months after grant, \$1,310.
- (3) 11 years and 6 months after grant, \$1,980.

Unless payment of the applicable maintenance fee is received in the Patent and Trademark Office on or before the date the fee is due or within a grace period of six months thereafter, the patent will expire as of the end of such grace period. The Commissioner may require the payment of a surcharge as a condition of accepting within such six-month grace period the late payment of an applicable maintenance fee. No fee will be established for maintaining a design or plant patent in force.

(c)(1) The Commissioner may accept the payment of any maintenance fee required by subsection (b) of this section which is made within twenty-four months after the six-month grace period if the delay is shown to the satisfaction of the Commissioner to have been unintentional, or at any time after the six-month grace period if the delay is shown to the satisfaction of the Commissioner to have been unavoidable. The Commissioner may require the payment of a surcharge as a condition of accepting payment of any maintenance fee after the six-month grace period. If the Commissioner accepts pay-

ment of a maintenance fee after the six-month grace period, the patent shall be considered as not having expired at the end of the grace period.

(2) No patent, the term of which has been maintained as a result of the acceptance of a payment of a maintenance fee under this subsection, shall abridge or affect the right of any person or his successors in business who made, purchased or used after the six-month grace period but prior to the acceptance of a maintenance fee under this subsection 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. 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 after the six-month grace period but before the acceptance of a maintenance fee under this subsection, and it may also provide for the continued practice of any process, practiced, or for the practice of which substantial preparation was made, after the six-month grace period but prior to the acceptance of a maintenance fee under this subsection, to the extent and under such terms as the court deems equitable for the protection of investments made or business commenced after the six-month grace period but before the acceptance of a maintenance fee under the subsection.

(d) The Commissioner shall establish fees for all other processing, services, or materials relating to patents not specified in this section to recover the estimated average cost to the Office of such processing, services, or materials, except that the Commissioner shall charge the following fees for the following services:

- (1) For recording a document affecting title, \$40 per property.
- (2) For each photocopy, \$.25 per page.
- (3) For each black and white copy of a patent, \$3.

The yearly fee for providing a library specified in section 13 of this title with uncertified printed copies of the specifications and drawings for all patents in that year shall be \$50.

(e) The Commissioner may waive the payment of any fee for any service or material related to patents in connection with an occasional or incidental request made by a department or agency of the Government, or any officer thereof. The Commissioner may provide any applicant issued a notice under section 132 of this title with a copy of the specifications and drawings for all patents referred to in that notice without charge.

(f) The fees established in subsections (a) and (b) of this section may be adjusted by the Commissioner on October 1, 1992, and every year thereafter, to reflect any fluctuations occurring during the previous 12 months in the Consumer Price Index, as determined by the Secretary of Labor. Changes of less than 1 per centum may be ignored.

(g) No fee established by the Commissioner under this section shall take effect until at least 30 days after notice of the fee has been published in the Federal Register and in the Official Gazette of the Patent and Trademark Office.

(h)(1) Fees charged under subsection (a) or (b) shall be reduced by 50 percent with respect to their application to any small business concern as defined under section 3 of the Small Business Act, and to any independent inventor or non-profit organization as defined in regulations issued by the Commissioner of Patents and Trademarks.

(2) With respect to its application to any entity described in paragraph (1), any surcharge or fee charged under subsection (c) or (d) shall not be higher than the surcharge or fee required of any other entity under the same or substantially similar circumstances.

(i)(1) The Commissioner shall maintain, for use by the public, paper or microform collections of United States patents, foreign patent documents, and United States trademark registrations arranged to permit search for and retrieval of information. The Commissioner may not impose fees directly for the use of such collections, or for the use of the public patent or trademark search rooms or libraries.

(2) The Commissioner shall provide for the full deployment of the automated search systems of the Patent and Trademark Office so that such systems are available for use by the public, and shall assure full access by the public to, and dissemination of, patent and trademark information, using a variety of automated methods, including electronic bulletin boards and remote access by users to mass storage and retrieval systems.

(3) The Commissioner may establish reasonable fees for access by the public to the automated search systems of the Patent and Trademark Office. If such fees are established, a limited amount of free access shall be made available to users of the systems for purposes of education and training. The Commissioner may waive the payment by an individual of fees authorized by this subsection upon a showing of need or hardship, and if such a waiver is in the public interest.

(4) The Commissioner shall submit to the Congress an annual report on the automated search systems of the Patent and Trademark Office and the access by the public to such systems. The Commissioner shall also publish such report in the Federal Register. The Commissioner shall provide an opportunity for the submission of comments by interested persons on each such report.

(July 19, 1952, ch. 950, 66 Stat. 796; July 24, 1965, Pub. L. 89-83, §§1, 2, 79 Stat. 259; Jan. 2, 1975, Pub. L. 93-596, §1, 88 Stat. 1949; Nov. 14, 1975, Pub. L. 94-131, §3, 89 Stat. 690; Dec. 12, 1980, Pub. L. 96-517, §2, 94 Stat. 3017; Aug. 27, 1982, Pub. L. 97-247, §3(a)-(e), 96 Stat. 317-319; Sept. 8, 1982, Pub. L. 97-256, title I, §101(1)-(4), 96 Stat. 816; Nov. 8, 1984, Pub. L. 98-622, title II, §204(a), 98 Stat. 3388; Nov. 6, 1986, Pub. L. 99-607, §1(b)(2), 100 Stat. 3470; Dec. 10, 1991, Pub. L. 102-204, §5(a)-(c)(1), (d)(1), (2)(A), 105 Stat. 1637-1639; Oct. 23, 1992, Pub. L. 102-444, §1, 106 Stat. 2245; Dec. 8, 1994, Pub. L. 103-465, title V, §§532(b)(2), 533(b)(1), 108 Stat. 4986, 4988.)

#### AMENDMENT OF SUBSECTION (c)(2)

*Pub. L. 103-465, title V, §§533(b)(1), 534(a), (b)(3), Dec. 8, 1994, 108 Stat. 4983, 4990, provided*

*that, effective on date that is one year after date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], with provisions relating to earliest filed patent application, subsection (c)(2) of this section is amended to read as follows:*

*(2) A patent, the term of which has been maintained as a result of the acceptance of a payment of a maintenance fee under this subsection, shall not abridge or affect the right of any person or that person's successors in business who made, purchased, offered to sell, or used anything protected by the patent within the United States, or imported anything protected by the patent into the United States after the 6-month grace period but prior to the acceptance of a maintenance fee under this subsection, to continue the use of, to offer for sale, or to sell to others to be used, offered for sale, or sold, the specific thing so made, purchased, offered for sale, used, or imported. The court before which such matter is in question may provide for the continued manufacture, use, offer for sale, or sale of the thing made, purchased, offered for sale, or used within the United States, or imported into the United States, as specified, or for the manufacture, use, offer for sale, or sale in the United States of which substantial preparation was made after the 6-month grace period but before the acceptance of a maintenance fee under this subsection, and the court may also provide for the continued practice of any process that is practiced, or for the practice of which substantial preparation was made, after the 6-month grace period but before the acceptance of a maintenance fee under this subsection, to the extent and under such terms as the court deems equitable for the protection of investments made or business commenced after the 6-month grace period but before the acceptance of a maintenance fee under this subsection.*

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §78 (R.S. 4934, amended (1) May 27, 1908, ch. 200, §1 (part), 35 Stat. 317, 343; (2) June 25, 1910, ch. 414, §2, 35 Stat. 843; (3) Feb. 18, 1922, ch. 58, §9, 42 Stat. 389, 393; (4) Feb. 14, 1927, ch. 139, §2, 44 Stat. 1098, 1099; (5) Mar. 2, 1927, ch. 273, §13, 44 Stat. 1335, 1337; (6) April 11, 1930, ch. 132, §3, 46 Stat. 155; (7) June 30, 1932, ch. 314, §§308, 309, 47 Stat. 382, 410; (8) Aug. 9, 1939, ch. 619, §3, 53 Stat. 1293; July 5, 1946, ch. 541, §301 (part), 60 Stat. 446, 471).

The items in the schedule of fees are rearranged in a few instances and are numbered for convenient reference.

The obsolete fee for appeal from the examiners of interferences to the Board of Appeals is omitted.

The fee for appeal to the Board of Appeals is changed from \$15 to \$25.

Two provisos in the corresponding section of the existing statute have been made separate sections, see sections 12 and 13.

The fee for a certificate is changed from 50 cents to \$1 to correspond to the same fee in the trade-mark statute.

A new item (8) is added to go with section 205.

An omnibus item to take care of miscellaneous minor fees is added; in view of this, two items in the present schedule are omitted.

The fee for reissue applications is changed slightly.

#### REFERENCES IN TEXT

Section 3 of the Small Business Act, referred to in subsec. (h)(1), is classified to section 632 of Title 15, Commerce and Trade.

## AMENDMENTS

1994—Subsec. (a)(1)(C). Pub. L. 103-465, §532(b)(2), added subpar. (C).

1992—Subsec. (c)(1). Pub. L. 102-444 inserted after "section" in first sentence "which is made within twenty-four months after the six-month grace period if the delay is shown to the satisfaction of the Commissioner to have been unintentional, or at any time".

1991—Pub. L. 102-204, §5(d)(2)(A), inserted "; patent and trademark search systems" after "fees" in section catchline.

Subsec. (a). Pub. L. 102-204, §5(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "The Commissioner shall charge the following fees:

"1. On filing each application for an original patent, except in design or plant cases, \$300; in addition, on filing or on presentation at any other time, \$30 for each claim in independent form which is in excess of three, \$10 for each claim (whether independent or dependent) which is in excess of twenty, and \$100 for each application containing a multiple dependent claim. For the purpose of computing fees, a multiple dependent claim as referred to in section 112 of this title or any claim depending therefrom shall be considered as separate dependent claims in accordance with the number of claims to which reference is made. Errors in payment of the additional fees may be rectified in accordance with regulations of the Commissioner.

"2. For issuing each original or reissue patent, except in design or plant cases, \$500.

"3. In design and plant cases:

"a. On filing each design application, \$125.

"b. On filing each plant application, \$200.

"c. On issuing each design patent, \$175.

"d. On issuing each plant patent, \$250.

"4. On filing each application for the reissue of a patent, \$300; in addition, on filing or on presentation at any other time, \$30 for each claim in independent form which is in excess of the number of independent claims of the original patent, and \$10 for each claim (whether independent or dependent) which is in excess of twenty and also in excess of the number of claims of the original patent. Errors in payment of the additional fees may be rectified in accordance with regulations of the Commissioner.

"5. On filing each disclaimer, \$50.

"6. On filing an appeal from the examiner to the Board of Patent Appeals and Interferences, \$115; in addition, on filing a brief in support of the appeal, \$115, and on requesting an oral hearing in the appeal before the Board of Patent Appeals and Interferences, \$100.

"7. On filing each petition for the revival of an unintentionally abandoned application for a patent or for the unintentionally delayed payment of the fee for issuing each patent, \$500, unless the petition is filed under sections 133 or 151 of this title, in which case the fee shall be \$50.

"8. For petitions for one-month extensions of time to take actions required by the Commissioner in an application:

"a. On filing a first petition, \$50.

"b. On filing a second petition, \$100.

"c. On filing a third or subsequent petition, \$200."

Subsec. (b). Pub. L. 102-204, §5(a)(2), substituted "in force all patents based on applications filed on or after December 12, 1980:

"(1) 3 years and 6 months after grant, \$650.

"(2) 7 years and 6 months after grant, \$1,310.

"(3) 11 years and 6 months after grant, \$1,980."

for "a patent in force:

"1. Three years and six months after grant, \$400.

"2. Seven years and six months after grant, \$800.

"3. Eleven years and six months after grant, \$1,200."

Subsec. (d). Pub. L. 102-204, §5(a)(3), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "The Commissioner will establish fees for all other processing, services, or materials related to patents not specified above to recover the estimated aver-

age cost to the Office of such processing, services, or materials. The yearly fee for providing a library specified in section 13 of this title with uncertified printed copies of the specifications and drawings for all patents issued in that year will be \$50."

Subsec. (f). Pub. L. 102-204, §5(b), substituted "on October 1, 1992, and every year thereafter, to reflect any fluctuations occurring during the previous 12 months" for "on October 1, 1985, and every third year thereafter, to reflect any fluctuations occurring during the previous three years".

Subsec. (g). Pub. L. 102-204, §5(c)(1), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: "No fee established by the Commissioner under this section will take effect prior to sixty days following notice in the Federal Register."

Subsec. (i). Pub. L. 102-204, §5(d)(1), added subsec. (i).

1986—Subsec. (h). Pub. L. 99-607 added subsec. (h).

1984—Subsec. (a)(6). Pub. L. 98-622 substituted "Patent Appeals and Interferences" for "Appeals" in two places and inserted "in the appeal" after "oral hearing".

1982—Subsec. (a). Pub. L. 97-247, §3(a), substituted provisions setting a schedule of fees for provisions which had directed that the Commissioner establish fees for the processing of an application for a patent, from filing through disposition by issuance or abandonment, for maintaining a patent in force, and for providing all other services and materials related to patents and that fee would be established for maintaining a design patent in force.

Pub. L. 97-256, §101(1), struck out "of Patents" after "Commissioner".

Subsec. (b). Pub. L. 97-247, §3(b), substituted provisions setting a fee schedule for maintaining a patent in force for provisions which had directed that, fees for the actual processing of an application for a patent, other than for a design patent, from filing through disposition by issuance or abandonment, were to recover in aggregate 25 per centum of the estimated average cost to the Office of such processing and that fees for the processing of an application for a design patent, from filing through disposition by issuance or abandonment, were to recover in aggregate 50 per centum of the estimated average cost to the Office of such processing.

Pub. L. 97-256, §101(2), substituted "October 1, 1982" for "the first day of the first fiscal year beginning on or after one calendar year after enactment of this Act" and "the first day of the first fiscal year beginning on or after one calendar year after enactment".

Subsec. (c). Pub. L. 97-247, §3(c), substituted maintenance provisions for provisions which had directed that fees for maintaining patents in force were to recover 25 per centum of the estimated cost to the Office, for the year in which such maintenance fees were received, of the actual processing all applications for patents, other than for design patents, from filing through disposition by issuance or abandonment, that fees for maintaining a patent in force would be due three years and six months, seven years and six months, and eleven years and six months after the grant of the patent, that unless payment of the applicable maintenance fee was received in the Patent and Trademark Office on or before the date the fee was due or within a grace period of six months thereafter, the patent would expire as of the end of such grace period, and that the Commissioner could require the payment of a surcharge as a condition of accepting within such six-month grace period the late payment of an applicable maintenance fee.

Pub. L. 97-256, §101(3), substituted "October 1, 1996" for "the fifteenth fiscal year following the date of enactment of this Act".

Subsec. (d). Pub. L. 97-247, §3(d), substituted provisions relating to fees for all other processing services or materials relating to patents not previously specified for provisions directing that fees for all other services or materials related to patents were to recover the estimated average cost to the Office of performing the service or furnishing the material.

Pub. L. 97-256, §101(4), substituted "October 1, 1982" for "the first day of the first fiscal year beginning on or after one calendar year after enactment".

Subsec. (f). Pub. L. 97-247, §3(e), substituted provisions relating to the adjustment of fees to reflect CPI fluctuations for provisions directing that fees were to be adjusted by the Commissioner to achieve the levels of recovery specified in this section but that no patent application processing fee or fee for maintaining a patent in force was to be adjusted more than once every three years.

1980—Pub. L. 96-517 in revising fee provisions by substituting subsecs. (a) to (g) for prior subsecs. (a) to (c), required the Commissioner to establish fees based on recovery of estimated average cost of processing applications, performing miscellaneous services and providing material, required fees for maintenance of patents in force and provided for expiration of patents for non-payments, prescribed \$50 library fee for copies of specifications and drawings, authorized triennial adjustments, prescribed effective date for fees, and incorporated in subsec. (e) waiver provision of former subsec. (c).

1975—Subsec. (a)1. Pub. L. 94-131 inserted sentence respecting consideration of a multiple dependent claim as referred to in section 112 of this title or any claim depending therefrom as separate dependent claims in accordance with the number of claims to which reference is made for the purpose of computing fees.

Subsec. (b). Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

1965—Subsec. (a)1. Pub. L. 89-83, §1, increased the filing fee for original patents from \$30 to \$65, changed the additional fee from \$1 for each claim in excess of twenty to \$10 for each claim in independent form which is in excess of one and \$2 for each claim (whether independent or dependent) which is in excess of ten, and permitted the rectification of errors in the payment of the additional fees in accordance with regulations of the Commissioner.

Subsec. (a)2. Pub. L. 89-83, §1, applied the issue fee to reissue patents as well as to original patents, increased such fee from \$30 to \$100, and changed the additional fee from \$1 for each claim in excess of twenty to \$10 for each page (or portion thereof) of specification as printed and \$2 for each sheet of drawing.

Subsec. (a)3. Pub. L. 89-83, §1, changed the fee structure applicable to design patents from a filing fee of \$10, \$15, or \$30 for terms of 3½, 7, or 14 years, respectively, to a filing fee of \$20 and an issue fee of \$10, \$20, or \$30 for terms of 3½, 7, or 14 years, respectively.

Subsec. (a)4. Pub. L. 89-83, §1, increased the filing fee for reissue patents from \$30 to \$65, changed the additional fee from \$1 for each claim in excess of twenty over and above the number of claims in the original patent to \$10 for each claim in independent form which is in excess of the number of independent claims of the original patent and \$2 for each claim (whether independent or dependent) which is in excess of ten and also in excess of the number of claims in the original patent, and permitted the rectification of errors in the payment of the additional fees in accordance with regulations of the Commissioner.

Subsec. (a)5. Pub. L. 89-83, §1, increased the fee for filing disclaimers from \$10 to \$15.

Subsec. (a)6. Pub. L. 89-83, §1, increased the fee on appeal for the first time from the examiner to the Board of Appeals from \$25 to \$50, and added the additional \$50 fee for filing a brief in support of the appeal.

Subsec. (a)7. Pub. L. 89-83, §1, increased the fee for filing a petition for the revival of an abandoned application or for the delayed payment of the issuance fee from \$10 to \$15.

Subsec. (a)8. Pub. L. 89-83, §1, inserted fee for the certificate under section 256 of this title, and increased the fee for a certificate under section 255 of this title from \$10 to \$15.

Subsec. (a)9. Pub. L. 89-83, §1, increased the fee for copies of specifications and drawings of patents (other than design patents) from 25 cents to 50 cents per copy and the fee for copies of specifications and drawings of design patents from 10 cents to 20 cents per copy, and permitted the Commissioner to establish a charge not

to exceed \$1 per copy for patents in excess of twenty-five pages of drawings and specifications and for plant patents printed in color and to provide applicants, without charge, with copies of specifications and drawings when referred to in a section 132 notice.

Subsec. (a)10. Pub. L. 89-83, §1, changed the recording fee from \$3 for every document not exceeding six pages and \$1 for each additional two pages or less to a flat \$20 fee for every document, and substituted a \$3 fee for each additional item where the document relates to more than one patent or application for a 50 cents additional fee for each additional patent or application included in one writing where more than one is so included.

Subsec. (c). Pub. L. 89-83, §2, added subsec. (c).

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 532(b)(2) of 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.

Amendment by section 533(b)(1) of Pub. L. 103-465 effective on date that is one year after date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], with provisions relating to earliest filed patent application, see section 534(a), (b)(3) of Pub. L. 103-465, set out as a note under section 154 of this title.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Section 2 of Pub. L. 102-444 provided that: "The amendment made by section 1 [amending this section] shall take effect on the date of the enactment of this Act [Oct. 23, 1992]."

#### EFFECTIVE DATE OF 1991 AMENDMENT

Section 13 of Pub. L. 102-204 provided that: "This Act [amending this section, sections 6, 42, 202, 371, and 376 of this title, and section 1113 of Title 15, Commerce and Trade, enacting provisions set out as notes under this section, section 6 of this title, and section 1113 of Title 15, and amending and repealing provisions set out as notes under this section] takes effect on the date of the enactment of this Act [Dec. 10, 1991], except that the fees established by the amendment made by section 5(a) [amending this section] shall take effect on or after 1 day after such fees are published in the Federal Register."

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-622 effective three months after Nov. 8, 1984, see section 207 of Pub. L. 98-622, set out as a note under section 7 of this title.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Section 17(a) of Pub. L. 97-247 provided that: "Sections 1, 2, 4, 7, and 13 through 15 of this Act [amending sections 3, 6, 13, 115, and 261 of this title and section 1061 of Title 15, Commerce and Trade] shall take effect on the date of enactment of this Act [Aug. 27, 1982]. Sections 3 and 16 of this Act [amending this section, sections 42 and 173 of this title, and section 113 of Title 15] shall take effect on October 1, 1982. The maintenance fees provided for in section 3(b) of this Act [amending this section] shall not apply to patents applied for prior to the date of enactment of this Act. Each patent applied for on or after the date of enactment of this Act shall be subject to the maintenance fees established pursuant to section 3(b) of this Act or to maintenance fees hereafter established by law, as to the amounts paid and the number and timing of the payments."

#### EFFECTIVE DATE OF 1980 AMENDMENT

Section 8 of Pub. L. 96-517 provided that:

“(a) Sections 2, 4, and 5 of this Act [amending this section, section 154 of this title, and section 1113 of Title 15, Commerce and Trade] will take effect upon enactment [Dec. 12, 1980].

“(b) Section 1 of this Act [enacting sections 301 to 307 of this title] will take effect on the first day of the seventh month beginning after its enactment [Dec. 12, 1980] and will apply to patents in force as of that date or issued thereafter.

“(c) Section 3 of this Act [amending section 42 of this title] will take effect on the first day of the first fiscal year beginning on or after one calendar year after enactment [Dec. 12, 1980]. However, until section 3 takes effect, the Commissioner may credit the Patent and Trademark Office appropriation account in the Treasury of the United States with the revenues from collected reexamination fees, which will be available to pay the costs to the Office of reexamination proceedings.

“(d) Any fee in effect as of the date of enactment of this Act [Dec. 12, 1980] will remain in effect until a corresponding fee established under section 41 of title 35, United States Code, or section 1113 of title 15, United States Code, takes effect.

“(e) Fees for maintaining a patent in force will not be applicable to patents applied for prior to the date of enactment of this Act [Dec. 12, 1980].

“(f) Sections 6 and 7 of this Act [enacting sections 200 to 211 of this title and amending sections 2186, 2457, and 5908 of Title 42, The Public Health and Welfare] will take effect on the first day of the seventh month beginning after its enactment [Dec. 12, 1980]. Implementing regulations may be issued earlier.

“(g) Sections 8 and 9 [enacting this note and provision set out as a note under section 14 of this title] will take effect on the date of enactment of this Act [Dec. 12, 1980].”

#### EFFECTIVE DATE OF 1975 AMENDMENTS

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.

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

#### EFFECTIVE DATE OF 1965 AMENDMENT

Section 7 of Pub. L. 89-83 provided that:

“(a) This Act [amending this section, sections 112, 151, 154, and 282 of this title, and section 1113 of Title 15, Commerce and Trade, and repealing section 266 of this title] shall take effect three months after its enactment [July 24, 1965].

“(b) Items 1, 3, and 4 of section 41(a) of title 35, United States Code, as amended by section 1 of this Act, do not apply in further proceedings in applications filed prior to the effective date of this Act.

“(c) Item 2 of section 41(a), as amended by section 1 of this Act [item 2 of subsec. (a) of this section], and section 4 of this Act [amending section 151 of this title] do not apply in cases in which the notice of allowance of the application was sent, or in which a patent issued, prior to the effective date; and, in such cases, the fee due is the fee specified in this title prior to the effective date of this Act.

“(d) Item 3 of section 31 of the Trademark Act, as amended by section 3 of this Act [item 3 of section 1113(a) of Title 15], applies only in the case of registrations issued and registrations published under the provisions of section 12(c) of the Trademark Act [section 1062(c) of Title 15] on or after the effective date of this Act.”

#### WAIVER OF CERTAIN RESTRICTIONS

Section 2(c) of Pub. L. 102-204 provided that: “Surcharges established for fiscal year 1992 under section

10101(c) of the Omnibus Budget Reconciliation Act of 1990 [Pub. L. 101-508, set out below] may take effect on or after 1 day after such surcharges are published in the Federal Register. Section 553 of title 5, United States Code, shall not apply to the establishment of such surcharges for fiscal year 1992.”

#### UNSPECIFIED PATENT FEES FOR FISCAL YEAR 1992; EFFECTIVE DATE CONTINGENT UPON PUBLICATION IN FEDERAL REGISTER

Section 5(c)(2) of Pub. L. 102-204 provided that: “Fees established by the Commissioner of Patents and Trademarks under section 41(d) of title 35, United States Code, during fiscal year 1992 may take effect on or after 1 day after such fees are published in the Federal Register. Section 41(g) of title 35, United States Code, and section 553 of title 5, United States Code, shall not apply to the establishment of such fees during fiscal year 1992.”

#### PATENT INFORMATION DISSEMINATION

Section 11 of Pub. L. 102-204 provided that:

“(a) DEFINITIONS.—For purposes of this section—

“(1) the term ‘CD-ROMs’ means compact discs formatted with read-only memory, including such discs that make use of advanced optical storage technology;

“(2) the term ‘classified patent information’ means patent information organized by the subject matter of the claimed invention according to the United States Patent Classification System or the classification system used by the country or authority that issues a patent;

“(3) the term ‘Commissioner’ means the Assistant Secretary of Commerce and Commissioner of Patents and Trademarks; and

“(4) the term ‘patent information’ means a complete and exact facsimile of a patent or patent application, including the text and all images contained therein (such as drawings, diagrams, formulas, and tables).

“(b) INFORMATION DISSEMINATION PROGRAM.—No later than January 1, 1992, the Commissioner shall establish a demonstration program which shall make patent information available in accordance with the provisions of this section, through October 1, 1992. The Commissioner shall produce master CD-ROMs containing classified patent information and provide copies of them to the public for purchase.

“(c) INFORMATION TO BE DISSEMINATED.—The patent information that shall be disseminated pursuant to this section shall be patent information in the possession of the Commissioner in computer readable form, including information on selected subclasses of United States patents, as determined by the Commissioner.

“(d) FEES.—The Commissioner shall establish fees for the purchase of CD-ROMs, at a rate sufficient to recover the estimated average marginal cost of producing and processing purchase orders for copies of master CD-ROMs.

“(e) REPORT.—On the date that is 1 year after the date of the enactment of this Act [Dec. 10, 1991] the Commissioner shall submit to Congress a report on the implementation of this section.”

#### SURCHARGES ON PATENT FEES

Pub. L. 101-508, title X, §10101(a)-(c), Nov. 5, 1990, 104 Stat. 1388-391, as amended by Pub. L. 102-204, §2(b), Dec. 10, 1991, 105 Stat. 1636; Pub. L. 103-66, title VIII, §8001, Aug. 10, 1993, 107 Stat. 402, provided that:

“(a) SURCHARGES.—There shall be a surcharge, during fiscal years 1991 through 1998, on all fees authorized by subsections (a) and (b) of section 41 of title 35, United States Code, in order to ensure that the amounts specified in subsection (c) are collected.

“(b) USE OF SURCHARGES.—Notwithstanding section 3302 of title 31, United States Code, beginning in fiscal year 1991, all surcharges collected by the Patent and Trademark Office—

“(1) in fiscal year 1991—

“(A) shall be credited to a separate account established in the Treasury and ascribed to the Patent and Trademark Office activities in the Department of Commerce as offsetting receipts, and

“(B) of these surcharges, \$91,000,000 shall be available only to the Patent and Trademark Office, to the extent provided in appropriation Acts, and the additional surcharge receipts, totalling \$18,807,000, shall be available only to the Patent and Trademark Office without appropriation, for all authorized activities and operations of the office, including all direct and indirect costs of services provided by the office,

“(2) in fiscal years 1992 through 1998—

“(A) shall be credited to a separate account established in the Treasury and ascribed to the Patent and Trademark Office activities in the Department of Commerce as offsetting receipts, and

“(B) shall be available only to the Patent and Trademark Office, to the extent provided in appropriation Acts, for all authorized activities and operations of the office, including all direct and indirect costs of services provided by the office, and

“(3) shall remain available until expended.

“(c) ESTABLISHMENT OF SURCHARGES.—In fiscal years 1991 through 1998, the Commissioner of Patents and Trademarks shall establish surcharges under subsection (a), subject to the provisions of section 553 of title 5, United States Code, in order to ensure that the following amounts, but not more than the following amounts, of patent and trademark user fees are collected:

- “(1) \$109,807,000 in fiscal year 1991.
- “(2) \$95,000,000 in fiscal year 1992.
- “(3) \$99,000,000 in fiscal year 1993.
- “(4) \$103,000,000 in fiscal year 1994.
- “(5) \$107,000,000 in fiscal year 1995.
- “(6) \$111,000,000 in fiscal year 1996.
- “(7) \$115,000,000 in fiscal year 1997.
- “(8) \$119,000,000 in fiscal year 1998.”

#### EFFECT ON OTHER LAWS

Pub. L. 101-508, title X, §10103, Nov. 5, 1990, 104 Stat. 1388-392, provided that: “Except for section 10101(d) [not classified to the Code], nothing in this subtitle [subtitle B (§§10101-10103) of title X of Pub. L. 101-508, enacting provisions set out as notes under this section and section 1 of this title] affects the provisions of Public Law 100-703 (102 Stat. 4674 and following) [see Tables for classification].”

#### PUBLIC ACCESS TO PATENT AND TRADEMARK OFFICE INFORMATION

Pub. L. 100-703, title I, §104(b), (c), Nov. 19, 1988, 102 Stat. 4675, provided that the Commissioner of Patents and Trademarks maintain patent and trademark collections, search rooms, and libraries for use by the public without fees and authorized establishment of fees for access by the public to automated search systems of the Patent and Trademark Office, prior to repeal by Pub. L. 102-204, §9, Dec. 10, 1991, 105 Stat. 1641. See section 41(i) of this title.

Pub. L. 99-607, §4, Nov. 6, 1986, 100 Stat. 3471, provided that the Commissioner of Patents and Trademarks could not impose a fee for use of public patent or trademark search rooms and libraries and that costs of such rooms and libraries should come from amounts appropriated by Congress, prior to repeal by Pub. L. 100-703, title I, §104(a), Nov. 19, 1988, 102 Stat. 4675.

#### PATENT FEES

Pub. L. 100-703, title I, §103(b), Nov. 19, 1988, 102 Stat. 4674, provided that: “The Commissioner of Patents and Trademarks may not, during fiscal years 1989, 1990, and 1991, increase fees established under section 41(d) of title 35, United States Code, except for purposes of making adjustments which in the aggregate do not exceed fluctuations during the previous three years in the

Consumer Price Index, as determined by the Secretary of Labor. The Commissioner also may not establish additional fees under such section during such fiscal years.”

Similar provisions were contained in the following prior authorization act:

Pub. L. 99-607, §3(b), Nov. 6, 1986, 100 Stat. 3471.

Section 404 of Pub. L. 98-622 provided that:

“(a) Notwithstanding section 41 of title 35, United States Code, as in effect before the enactment of Public Law 97-247 (96 Stat. 317) [Aug. 27, 1982], no fee shall be collected for maintaining a plant patent in force.

“(b) Notwithstanding section 41(c) of title 35, United States Code, as in effect before the enactment of Public Law 97-247 (96 Stat. 317) [Aug. 27, 1982], the Commissioner of Patents and Trademarks may accept, after the six-month grace period referred to in such section 41(c), the payment of any maintenance fee due on any patent based on an application filed in the Patent and Trademark Office on or after December 12, 1980, and before August 27, 1982, to the same extent as in the case of patents based on applications filed in the Patent and Trademark Office on or after August 27, 1982.”

#### CROSS REFERENCES

Payment of final fee, see section 151 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13, 119, 302, 371, 376 of this title.

### § 42. Patent and Trademark Office funding

(a) All fees for services performed by or materials furnished by the Patent and Trademark Office will be payable to the Commissioner.

(b) All fees paid to the Commissioner and all appropriations for defraying the costs of the activities of the Patent and Trademark Office will be credited to the Patent and Trademark Office Appropriation Account in the Treasury of the United States.

(c) Revenues from fees shall be available to the Commissioner to carry out, to the extent provided in appropriation Acts, the activities of the Patent and Trademark Office. Fees available to the Commissioner under section 31 of the Trademark Act of 1946 may be used only for the processing of trademark registrations and for other activities, services, and materials relating to trademarks and to cover a proportionate share of the administrative costs of the Patent and Trademark Office.

(d) The Commissioner may refund any fee paid by mistake or any amount paid in excess of that required.

(e) The Secretary of Commerce shall, on the day each year on which the President submits the annual budget to the Congress, provide to the Committees on the Judiciary of the Senate and the House of Representatives—

(1) a list of patent and trademark fee collections by the Patent and Trademark Office during the preceding fiscal year;

(2) a list of activities of the Patent and Trademark Office during the preceding fiscal year which were supported by patent fee expenditures, trademark fee expenditures, and appropriations;

(3) budget plans for significant programs, projects, and activities of the Office, including out-year funding estimates;

(4) any proposed disposition of surplus fees by the Office; and

(5) such other information as the committees consider necessary.

(July 19, 1952, ch. 950, 66 Stat. 796; Nov. 14, 1975, Pub. L. 94-131, § 4, 89 Stat. 690; Dec. 12, 1980, Pub. L. 96-517, § 3, 94 Stat. 3018; Aug. 27, 1982, Pub. L. 97-247, § 3(g), 96 Stat. 319; Sept. 13, 1982, Pub. L. 97-258, § 3(i), 96 Stat. 1065; Dec. 10, 1991, Pub. L. 102-204, §§ 4, 5(e), 105 Stat. 1637, 1640.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 79 (Mar. 6, 1920, ch. 94, § 1 (part), 41 Stat. 503, 512).  
Language has been changed.

REFERENCES IN TEXT

Section 31 of the Trademark Act of 1946, referred to in subsec. (c), is classified to section 1113 of Title 15, Commerce and Trade.

AMENDMENTS

1991—Subsec. (c). Pub. L. 102-204, § 5(e), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "Revenues from fees will be available to the Commissioner of Patents to carry out, to the extent provided for in appropriation Acts, the activities of the Patent and Trademark Office. Fees available to the Commissioner under section 31 of the Trademark Act of 1946, as amended (15 U.S.C. 1113), shall be used exclusively for the processing of trademark registrations and for other services and materials related to trademarks."

Subsec. (e). Pub. L. 102-204, § 4, added subsec. (e).  
1982—Subsec. (b). Pub. L. 97-258 struck out "the provisions of section 725e of title 31, United States Code, notwithstanding" after "United States".

Subsec. (c). Pub. L. 97-247 inserted provision that fees available to the Commissioner under section 31 of the Trademark Act of 1946, as amended (15 U.S.C. 1113), be used exclusively for the processing of trademark registrations and for other services and materials related to trademarks.

1980—Pub. L. 96-517 designated existing provision relating to payment of patent fees as subsec. (a) and struck out provision that, except as provided in sections 361(b) and 376(b) of this title, the Commissioner deposit fees paid in the Treasury of the United States in such manner as directed by the Secretary of the Treasury, designated existing provision relating to return of excess amounts paid as subsec. (d), and added subsecs. (b) and (c).  
1975—Pub. L. 94-131 inserted "except as provided in sections 361(b) and 376(b) of this title,".

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-247 effective Oct. 1, 1982, see section 17(a) of Pub. L. 97-247, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-517 effective on first day of first fiscal year beginning on or after one calendar year after Dec. 12, 1980, subject to authorization of appropriation account credits from collected reexamination fees prior to the effective date, made available for payment of reexamination proceedings costs, see section 8(c) of Pub. L. 96-517, set out as a note under section 41 of this title.

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.

APPROPRIATIONS AUTHORIZED TO BE CARRIED OVER

Pub. L. 100-703, title I, § 102, Nov. 19, 1988, 102 Stat. 4674, provided that: "Amounts appropriated under this

Act and such fees as may be collected under title 35, United States Code, and the Trademark Act of 1946 (15 U.S.C. 1051 and following) may remain available until expended."

Similar provisions were contained in the following prior authorization act:

Pub. L. 99-607, § 2, Nov. 6, 1986, 100 Stat. 3470.

PART II—PATENTABILITY OF INVENTIONS AND GRANT OF PATENTS

Table with 2 columns: Chap. and Sec. listing sections 10 through 18 with their respective titles and page numbers.

AMENDMENTS

1982—Pub. L. 97-256, title I, § 101(6), Sept. 8, 1982, 96 Stat. 816, added item for chapter 18.

1975—Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949, substituted "Patent and Trademark Office" for "Patent Office" in heading of chapter 13.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 282 of this title.

CHAPTER 10—PATENTABILITY OF INVENTIONS

Table with 2 columns: Sec. and Definitions listing sections 100 through 105 with their respective titles.

AMENDMENTS

1990—Pub. L. 101-580, § 1(b), Nov. 15, 1990, 104 Stat. 2863, added item 105.

§ 100. Definitions

When used in this title unless the context otherwise indicates—

(a) The term "invention" means invention or discovery.

(b) The term "process" means process, art or method, and includes a new use of a known process, machine, manufacture, composition of matter, or material.

(c) The terms "United States" and "this country" mean the United States of America, its territories and possessions.

(d) The word "patentee" includes not only the patentee to whom the patent was issued but also the successors in title to the patentee.

(July 19, 1952, ch. 950, 66 Stat. 797.)

HISTORICAL AND REVISION NOTES

Paragraph (a) is added only to avoid repetition of the phrase "invention or discovery" and its derivatives

<sup>1</sup> So in original. Does not conform to chapter heading.