

Patent and Trademark Office, and shall be signed by the Commissioner or have his signature placed thereon and attested by an officer of the Patent and Trademark Office designated by the Commissioner, and shall be recorded in the Patent and Trademark Office.

(July 19, 1952, ch. 950, 66 Stat. 804; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 39 (R.S. 4883, amended (1) Feb. 18, 1888, ch. 15, 25 Stat. 40, (2) April 11, 1903, ch. 417, 32 Stat. 95, (3) Feb. 18, 1922, ch. 58, § 5, 42 Stat. 391).

The phrases referring to the attesting officers and to the recording of the patents are broadened.

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

Seal, see section 2 of this title.

§ 154. Contents and term of patent

(a) IN GENERAL.—

(1) CONTENTS.—Every patent shall contain a short title of the invention and a grant to the patentee, his heirs or assigns, of the right to exclude others from making, using, offering for sale, or selling the invention throughout the United States or importing the invention into the United States, and, if the invention is a process, of the right to exclude others from using, offering for sale or selling throughout the United States, or importing into the United States, products made by that process, referring to the specification for the particulars thereof.

(2) TERM.—Subject to the payment of fees under this title, such grant shall be for a term beginning on the date on which the patent issues and ending 20 years from the date on which the application for the patent was filed in the United States or, if the application contains a specific reference to an earlier filed application or applications under section 120, 121, or 365(c) of this title, from the date on which the earliest such application was filed.

(3) PRIORITY.—Priority under section 119, 365(a), or 365(b) of this title shall not be taken into account in determining the term of a patent.

(4) SPECIFICATION AND DRAWING.—A copy of the specification and drawing shall be annexed to the patent and be a part of such patent.

(b) TERM EXTENSION.—

(1) INTERFERENCE DELAY OR SECRECY ORDERS.—If the issue of an original patent is delayed due to a proceeding under section 135(a) of this title, or because the application for patent is placed under an order pursuant to section 181 of this title, the term of the patent shall be extended for the period of delay, but in no case more than 5 years.

(2) EXTENSION FOR APPELLATE REVIEW.—If the issue of a patent is delayed due to appellate

review by the Board of Patent Appeals and Interferences or by a Federal court and the patent is issued pursuant to a decision in the review reversing an adverse determination of patentability, the term of the patent shall be extended for a period of time but in no case more than 5 years. A patent shall not be eligible for extension under this paragraph if it is subject to a terminal disclaimer due to the issue of another patent claiming subject matter that is not patentably distinct from that under appellate review.

(3) LIMITATIONS.—The period of extension referred to in paragraph (2)—

(A) shall include any period beginning on the date on which an appeal is filed under section 134 or 141 of this title, or on which an action is commenced under section 145 of this title, and ending on the date of a final decision in favor of the applicant;

(B) shall be reduced by any time attributable to appellate review before the expiration of 3 years from the filing date of the application for patent; and

(C) shall be reduced for the period of time during which the applicant for patent did not act with due diligence, as determined by the Commissioner.

(4) LENGTH OF EXTENSION.—The total duration of all extensions of a patent under this subsection shall not exceed 5 years.

(c) CONTINUATION.—

(1) DETERMINATION.—The term of a patent that is in force on or that results from an application filed before the date that is 6 months after the date of the enactment of the Uruguay Round Agreements Act shall be the greater of the 20-year term as provided in subsection (a), or 17 years from grant, subject to any terminal disclaimers.

(2) REMEDIES.—The remedies of sections 283, 284, and 285 of this title shall not apply to Acts¹ which—

(A) were commenced or for which substantial investment was made before the date that is 6 months after the date of the enactment of the Uruguay Round Agreements Act; and

(B) became infringing by reason of paragraph (1).

(3) REMUNERATION.—The acts referred to in paragraph (2) may be continued only upon the payment of an equitable remuneration to the patentee that is determined in an action brought under chapter 28 and chapter 29 (other than those provisions excluded by paragraph (2)) of this title.

(July 19, 1952, ch. 950, 66 Stat. 804; July 24, 1965, Pub. L. 89-83, § 5, 79 Stat. 261; Dec. 12, 1980, Pub. L. 96-517, § 4, 94 Stat. 3018; Aug. 23, 1988, Pub. L. 100-418, title IX, § 9002, 102 Stat. 1563; Dec. 8, 1994, Pub. L. 103-465, title V, § 532(a)(1), 108 Stat. 4983.)

PROSPECTIVE EFFECTIVE DATE

Subsection (a)(1) of this section effective on date that is one year after date on which the WTO Agreement enters into force with respect

¹ So in original. Probably should not be capitalized.

to the United States [Jan. 1, 1995], with provisions relating to earliest filed patent application, see Effective Date of 1994 Amendment note below.

HISTORICAL AND REVISION NOTES

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

The reference to plants is omitted for inclusion in another section and the reference to the title is shortened since the title is of no legal significance.

The wording of the granting clause is changed to “the right to exclude others from making, using, or selling”, following language used by the Supreme Court, to render the meaning clearer.

“United States” is defined in section 100.

REFERENCES IN TEXT

The date of the enactment of the Uruguay Round Agreements Act, referred to in subsec. (c)(1), (2)(A), is the date of enactment of Pub. L. 103-465, which was approved Dec. 8, 1994.

AMENDMENTS

1994—Pub. L. 103-465 amended section catchline and text generally. Prior to amendment, text read as follows: “Every patent shall contain a short title of the invention and a grant to the patentee, his heirs or assigns, for the term of seventeen years, subject to the payment of fees as provided for in this title, of the right to exclude others from making, using, or selling the invention throughout the United States and, if the invention is a process, of the right to exclude others from using or selling throughout the United States, or importing into the United States, products made by that process., referring to the specification for the particulars thereof. A copy of the specification and drawings shall be annexed to the patent and be a part thereof.”

1988—Pub. L. 100-418 inserted “and, if the invention is a process, of the right to exclude others from using or selling throughout the United States, or importing into the United States, products made by that process,” after “United States”.

1980—Pub. L. 96-517 substituted “payment of fees” for “payment of issue fees”.

1965—Pub. L. 89-83 added “subject to the payment of issue fees as provided for in this title”.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 534 of title V of Pub. L. 103-465 provided that: “(a) IN GENERAL.—Subject to subsection (b), the amendments made by this subtitle [subtitle C (§§ 531-534) of title V of Pub. L. 103-465, amending this section and sections 41, 104, 111, 119, 156, 172, 173, 252, 262, 271, 272, 287, 292, 295, 307, 365, and 373 of this title] take effect on the date that is one year after the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995].

“(b) PATENT APPLICATIONS.—

“(1) IN GENERAL.—Subject to paragraph (2), the amendments made by section 532 [amending this section and sections 41, 111, 119, 156, 172, 173, 365, and 373 of this title] take effect on the date that is 6 months after the date of the enactment of this Act [Dec. 8, 1994] and shall apply to all patent applications filed in the United States on or after the effective date.

“(2) SECTION 154(a)(1).—Section 154(a)(1) of title 35, United States Code, as amended by section 532(a)(1) of this Act, shall take effect on the effective date described in subsection (a).

“(3) EARLIEST FILING.—The term of a patent granted on an application that is filed on or after the effective date described in subsection (a) and that contains a specific reference to an earlier application filed under the provisions of section 120, 121, or 365(c) of title 35, United States Code, shall be measured from the filing date of the earliest filed application.”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-418 effective 6 months after Aug. 23, 1988, and, subject to enumerated exceptions, applicable only with respect to products made or imported after such effective date, see section 9006 of Pub. L. 100-418, set out as a note under section 271 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-517 effective Dec. 12, 1980, see section 8(a) of Pub. L. 96-517, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

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

REGULATIONS

Section 532(a)(2) of Pub. L. 103-465 provided that:

“(A) The Commissioner of Patents and Trademarks shall prescribe regulations to provide for further limited reexamination of applications that have been pending for 2 years or longer as of the effective date of section 154(a)(2) of title 35, United States Code [see Effective Date of 1994 Amendment note above], as added by paragraph (1) of this subsection, taking into account any reference made in such application to any earlier filed application under section 120, 121, or 365(c) of such title. The Commissioner may establish appropriate fees for such further limited reexamination.

“(B) The Commissioner of Patents and Trademarks shall prescribe regulations to provide for the examination of more than 1 independent and distinct invention in an application that has been pending for 3 years or longer as of the effective date of section 154(a)(2) of title 35, United States Code, as added by paragraph (1) of this subsection, taking into account any reference made in such application to any earlier filed application under section 120, 121, or 365(c) of such title. The Commissioner may establish appropriate fees for such examination.”

CROSS REFERENCES

Design patent, term of, see section 173 of this title.

Plant patents, grant of, see section 163 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 155, 155A of this title.

§ 155. Patent term extension

Notwithstanding the provisions of section 154, the term of a patent which encompasses within its scope a composition of matter or a process for using such composition shall be extended if such composition or process has been subjected to a regulatory review by the Federal Food and Drug Administration pursuant to the Federal Food, Drug, and Cosmetic Act leading to the publication of regulation permitting the interstate distribution and sale of such composition or process and for which there has thereafter been a stay of regulation of approval imposed pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act which stay was in effect on January 1, 1981, by a length of time to be measured from the date such stay of regulation of approval was imposed until such proceedings are finally resolved and commercial marketing permitted. The patentee, his heirs, successors or assigns shall notify the Commissioner of Patents and Trademarks within ninety days of the date of enactment of this section or the date the stay of regulation of approval has been removed,