(B) any nonprofit, charitable, scientific, or educational organization, qualified under applicable State law or described under section 170(b)(1)(A) of the Internal Revenue Code of 1986;

(C) any person or entity involved in the evaluation to determine commercial potential of, or offering to license or sell, a utility patent or a previously filed nonprovisional utility patent application;

(D) any party participating in a transaction involving the sale of the stock or assets of a business; or

(E) any party who directly engages in the business of retail sales of products or the distribution of products; and

(4) the term “invention promotion services” means the procurement or attempted procurement for a customer of a firm, corporation, or other entity to develop and market products or services that include the invention of the customer.

(d) RECORDS OF COMPLAINTS.—

(1) RELEASE OF COMPLAINTS.—The Commissioner of Patents shall make all complaints received by the Patent and Trademark Office involving invention promoters publicly available, together with any response of the invention promoters. The Commissioner of Patents shall notify the invention promoter of a complaint and provide a reasonable opportunity to reply prior to making such complaint publicly available.

(2) REQUEST FOR COMPLAINTS.—The Commissioner of Patents may request complaints relating to invention promotion services from any Federal or State agency and include such complaints in the records maintained under paragraph (1), together with any response of the invention promoters.


REFERENCES IN TEXT


EFFECTIVE DATE

Pub. L. 106–113, div. B, §1000(a)(9) [title IV, subtitle A, §4101], Nov. 29, 1999, 113 Stat. 1536, 1501A–554, provided that: “This subtitle [enacting this section and provisions set out as a note under section 1 of this title] and the amendments made by this subtitle shall take effect 60 days after the date of the enactment of this Act [Nov. 29, 1999].”

CHAPTER 30—PRIOR ART CITATIONS TO OFFICE AND EX PARTE REEXAMINATION OF PATENTS

Sec.

301. Citation of prior art.

302. Request for reexamination.

303. Determination of issue by Director.

304. Reexamination order by Director.

305. Conduct of reexamination proceedings.

306. Appeal.


Amendments


§ 301. Citation of prior art

Any person at any time may cite to the Office in writing prior art consisting of patents or printed publications which that person believes to have a bearing on the patentability of any claim of a particular patent. If the person explains in writing the pertinency and manner of applying such prior art to at least one claim of the patent, the citation of such prior art and the explanation thereof will become a part of the official file of the patent. At the written request of the person citing the prior art, his or her identity will be excluded from the patent file and kept confidential.


EFFECTIVE DATE

Chapter effective July 1, 1981, and applicable to patents in force as of July 1, 1981, or issued thereafter, see section 8(b) of Pub. L. 96–517, set out as an Effective Date of 1980 Amendment note under section 41 of this title.

§ 302. Request for reexamination

Any person at any time may file a request for reexamination by the Office of any claim of a patent on the basis of any prior art cited under the provisions of section 301 of this title. The request must be in writing and must be accompanied by payment of a reexamination fee established by the Director pursuant to the provisions of section 41 of this title. The request must set forth the pertinency and manner of applying cited prior art to every claim for which reexamination is requested. Unless the requesting person is the owner of the patent, the Director promptly will send a copy of the request to the owner of record of the patent.


Amendments


Pub. L. 106–113, §1000(a)(9) [title IV, §4732(a)(8)], substituted “Director pursuant” for “Commissioner of Patents pursuant”.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731]
§ 303. Determination of issue by Director

(a) Within three months following the filing of a request for reexamination under the provisions of section 302 of this title, the Director will determine whether a substantial new question of patentability affecting any claim of the patent concerned is raised by the request, with or without consideration of other patents or printed publications. On his own initiative, and any time, the Director may determine whether a substantial new question of patentability is raised by patents and publications discovered by him or cited under the provisions of section 301 of this title. The existence of a substantial new question of patentability is not precluded by the fact that a patent or printed publication was previously cited by or to the Office or considered by the Office.

(b) A record of the Director’s determination under subsection (a) of this section will be placed in the official file of the patent, and a copy promptly will be given or mailed to the owner of record of the patent and to the person requesting reexamination, if any.

(c) A determination by the Director pursuant to subsection (a) of this section that no substantial new question of patentability has been raised will be final and nonappealable. Upon such a determination, the Director may refund a portion of the reexamination fee required under section 302 of this title.


AMENDMENTS


Pub. L. 107–273, §13105(a), inserted at end “The existence of a substantial new question of patentability is not precluded by the fact that a patent or printed publication was previously cited by or to the Office or considered by the Office.”


Effective Date of 1999 Amendment


§ 304. Reexamination order by Director

If, in a determination made under the provisions of subsection 303(a) of this title, the Director finds that a substantial new question of patentability affecting any claim of a patent is raised, the determination will include an order for reexamination of the patent for resolution of the question. The patent owner will be given a reasonable period, not less than two months from the date a copy of the determination is given or mailed to him, within which he may file a statement on such question, including any amendment to his patent and new claim or claims he may wish to propose, for consideration in the reexamination. If the patent owner files such a statement, he promptly will serve a copy of it on the person who has requested reexamination under the provisions of section 302 of this title. Within a period of two months from the date of service, that person may file and have considered in the reexamination a reply to any statement filed by the patent owner. That person promptly will serve on the patent owner a copy of any reply filed.


AMENDMENTS


Effective Date of 1999 Amendment


§ 305. Conduct of reexamination proceedings

After the times for filing the statement and reply provided for by section 304 of this title have expired, reexamination will be conducted according to the procedures established for initial examination under the provisions of sections 132 and 133 of this title. In any reexamination proceeding under this chapter, the patent owner will be permitted to propose any amendment to his patent and a new claim or claims thereto, in order to distinguish the invention as claimed from the prior art cited under the provi-
Title 35—Patents

§ 306. Appeal
The patent owner involved in a reexamination proceeding under this chapter may appeal under the provisions of section 314 of this title, and may seek court review under the provisions of sections 141 to 145 of this title, when the time for appeal has expired or proceedings under this chapter have been conducted with special dispatch within the Office.

Amendments

Effective Date of 1984 Amendment

§ 307. Certificate of patentability, unpatentability, and claim cancellation

(a) In a reexamination proceeding under this chapter, when the time for appeal has expired or any appeal proceeding has terminated, the Director will issue and publish a certificate canceling any claim of the patent finally determined to be unpatentable, confirming any claim of the patent determined to be patentable, and incorporating in the patent any proposed amended or new claim determined to be patentable.

(b) Any proposed amended or new claim determined to be patentable and incorporated into a patent following a reexamination proceeding will have the same effect as that specified in section 252 of this title for reissued patents on the right of any person who made, purchased, or used within the United States, anything patented by such proposed amended or new claim, or who made substantial preparation for the same, prior to issuance of a certificate under the provisions of subsection (a) of this section.

Amendments

Effective Date of 1999 Amendment

Effective Date of 1994 Amendment
Amendment by 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.

Chapter 31—Optional Inter partes Reexamination Procedures

Sec.
311. Request for inter partes reexamination.
312. Determination of issue by Director.
313. Inter partes reexamination order by Director.
314. Conduct of inter partes reexamination proceedings.
315. Appeal.
316. Certificate of patentability, unpatentability, and claim cancellation.
317. Inter partes reexamination prohibited.
318. Stay of litigation.

Amendments

§ 311. Request for inter partes reexamination

(a) In general.—Any third-party requester at any time may file a request for inter partes reexamination by the Office of a patent on the basis of any prior art cited under the provisions of section 301.

(b) Requirements.—The request shall—

(1) be in writing, include the identity of the real party in interest, and be accompanied by payment of an inter partes reexamination fee established by the Director under section 41; and

(2) set forth the pertinency and manner of applying cited prior art to every claim for which reexamination is requested.

(c) Copy.—The Director promptly shall send a copy of the request to the owner of record of the patent.

Amendments


Subsec. (c). Pub. L. 107–273, § 13202(a)(1)(B), substituted “The” for “Unless the requesting person is the owner of the patent, the”.