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#### Editorial Notes

##### AMENDMENTS

2002—Pub. L. 107-273, div. C, title III, § 13206(a)(6), Nov. 2, 2002, 116 Stat. 1904, substituted “Examination of Application” for “Examination of Applications” in heading of chapter 12.

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.

### CHAPTER 10—PATENTABILITY OF INVENTIONS

Sec.	
100.	Definitions.
101.	Inventions patentable.
102.	Conditions for patentability; novelty.
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[104.	Repealed.]
105.	Inventions in outer space.

#### Editorial Notes

##### AMENDMENTS

2011—Pub. L. 112-29, § 3(b)(3), (d), Sept. 16, 2011, 125 Stat. 287, substituted in item 102 “Conditions for patentability; novelty” for “Conditions for patentability; novelty and loss of right to patent” and struck out item 104 “Invention made abroad”.

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.

(e) The term “third-party requester” means a person requesting ex parte reexamination under section 302 who is not the patent owner.

(f) The term “inventor” means the individual or, if a joint invention, the individuals collectively who invented or discovered the subject matter of the invention.

(g) The terms “joint inventor” and “co-inventor” mean any 1 of the individuals who in-

vented or discovered the subject matter of a joint invention.

(h) The term “joint research agreement” means a written contract, grant, or cooperative agreement entered into by 2 or more persons or entities for the performance of experimental, developmental, or research work in the field of the claimed invention.

(i)(1) The term “effective filing date” for a claimed invention in a patent or application for patent means—

(A) if subparagraph (B) does not apply, the actual filing date of the patent or the application for the patent containing a claim to the invention; or

(B) the filing date of the earliest application for which the patent or application is entitled, as to such invention, to a right of priority under section 119, 365(a), 365(b), 386(a), or 386(b) or to the benefit of an earlier filing date under section 120, 121, 365(c), or 386(c).

(2) The effective filing date for a claimed invention in an application for reissue or reissued patent shall be determined by deeming the claim to the invention to have been contained in the patent for which reissue was sought.

(j) The term “claimed invention” means the subject matter defined by a claim in a patent or an application for a patent.

(July 19, 1952, ch. 950, 66 Stat. 797; Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4603], Nov. 29, 1999, 113 Stat. 1536, 1501A-567; Pub. L. 112-29, § 3(a), Sept. 16, 2011, 125 Stat. 285; Pub. L. 112-211, title I, § 102(1), Dec. 18, 2012, 126 Stat. 1531.)

##### HISTORICAL AND REVISION NOTES

Paragraph (a) is added only to avoid repetition of the phrase “invention or discovery” and its derivatives throughout the revised title. The present statutes use the phrase “invention or discovery” and derivatives.

Paragraph (b) is noted under section 101.

Paragraphs (c) and (d) are added to avoid the use of long expressions in various parts of the revised title.

#### Editorial Notes

##### AMENDMENTS

2012—Subsec. (i)(1)(B). Pub. L. 112-211 substituted “right of priority under section 119, 365(a), 365(b), 386(a), or 386(b) or to the benefit of an earlier filing date under section 120, 121, 365(c), or 386(c)” for “right of priority under section 119, 365(a), or 365(b) or to the benefit of an earlier filing date under section 120, 121, or 365(c)”.

2011—Subsec. (e). Pub. L. 112-29, § 3(a)(1), struck out “or inter partes reexamination under section 311” after “302”.

Subsecs. (f) to (j). Pub. L. 112-29, § 3(a)(2), added subsecs. (f) to (j).

1999—Subsec. (e). Pub. L. 106-113 added subsec. (e).

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2012 AMENDMENT

Pub. L. 112-211, title I, § 103, Dec. 18, 2012, 126 Stat. 1532, provided that:

“(a) IN GENERAL.—The amendments made by this title [enacting part V of this title and amending this section and sections 102, 111, 115, 120, 154, 173, 365, and 366 of this title] shall take effect on the later of—

“(1) the date that is 1 year after the date of the enactment of this Act [Dec. 18, 2012]; or

“(2) the date of entry into force of the treaty with respect to the United States [May 13, 2015].

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

“(b) APPLICABILITY OF AMENDMENTS.—

“(1) IN GENERAL.—Subject to paragraph (2), the amendments made by this title shall apply only to international design applications, international applications, and national applications filed on and after the effective date set forth in subsection (a), and patents issuing thereon.

“(2) EXCEPTION.—Sections 100(i) and 102(d) of title 35, United States Code, as amended by this title, shall not apply to an application, or any patent issuing thereon, unless it is described in section 3(n)(1) of the Leahy-Smith America Invents Act [Pub. L. 112–29] (35 U.S.C. 100 note).

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

“(1) the terms ‘treaty’ and ‘international design application’ have the meanings given those terms in section 381 of title 35, United States Code, as added by this title;

“(2) the term ‘international application’ has the meaning given that term in section 351(c) of title 35, United States Code; and

“(3) the term ‘national application’ means ‘national application’ within the meaning of chapter 38 of title 35, United States Code, as added by this title.”

EFFECTIVE DATE OF 2011 AMENDMENT; SAVINGS PROVISIONS

Pub. L. 112–29, §3(n), Sept. 16, 2011, 125 Stat. 293, provided that:

“(1) IN GENERAL.—Except as otherwise provided in this section [amending this section and sections 32, 102, 103, 111, 119, 120, 134, 135, 145, 146, 154, 172, 202, 287, 291, 305, 363, 374, and 375 of this title, repealing sections 104 and 157 of this title, and enacting provisions set out as notes under sections 32, 102, and 111 of this title], the amendments made by this section shall take effect upon the expiration of the 18-month period beginning on the date of the enactment of this Act [Sept. 16, 2011], and shall apply to any application for patent, and to any patent issuing thereon, that contains or contained at any time—

“(A) a claim to a claimed invention that has an effective filing date as defined in section 100(i) of title 35, United States Code, that is on or after the effective date described in this paragraph; or

“(B) a specific reference under section 120, 121, or 365(c) of title 35, United States Code, to any patent or application that contains or contained at any time such a claim.

“(2) INTERFERING PATENTS.—The provisions of sections 102(g), 135, and 291 of title 35, United States Code, as in effect on the day before the effective date set forth in paragraph (1) of this subsection, shall apply to each claim of an application for patent, and any patent issued thereon, for which the amendments made by this section also apply, if such application or patent contains or contained at any time—

“(A) a claim to an invention having an effective filing date as defined in section 100(i) of title 35, United States Code, that occurs before the effective date set forth in paragraph (1) of this subsection; or

“(B) a specific reference under section 120, 121, or 365(c) of title 35, United States Code, to any patent or application that contains or contained at any time such a claim.”

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective Nov. 29, 1999, and applicable to any patent issuing from an original application filed in the United States on or after that date, see section 1000(a)(9) [title IV, §4608(a)] of Pub. L. 106–113, set out as a note under section 41 of this title.

## § 101. Inventions patentable

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, sub-

ject to the conditions and requirements of this title.

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

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §31 (R.S. 4886, amended (1) Mar. 3, 1897, ch. 391, §1, 29 Stat. 692, (2) May 23, 1930, ch. 312, §1, 46 Stat. 376, (3) Aug. 5, 1939, ch. 450, §1, 53 Stat. 1212).

The corresponding section of existing statute is split into two sections, section 101 relating to the subject matter for which patents may be obtained, and section 102 defining statutory novelty and stating other conditions for patentability.

Section 101 follows the wording of the existing statute as to the subject matter for patents, except that reference to plant patents has been omitted for incorporation in section 301 and the word “art” has been replaced by “process”, which is defined in section 100. The word “art” in the corresponding section of the existing statute has a different meaning than the same word as used in other places in the statute; it has been interpreted by the courts as being practically synonymous with process or method. “Process” has been used as its meaning is more readily grasped than “art” as interpreted, and the definition in section 100(b) makes it clear that “process or method” is meant. The remainder of the definition clarifies the status of processes or methods which involve merely the new use of a known process, machine, manufacture, composition of matter, or material; they are processes or methods under the statute and may be patented provided the conditions for patentability are satisfied.

### Statutory Notes and Related Subsidiaries

#### LIMITATION ON ISSUANCE OF PATENTS

Pub. L. 112–29, §33, Sept. 16, 2011, 125 Stat. 340, provided that:

“(a) LIMITATION.—Notwithstanding any other provision of law, no patent may issue on a claim directed to or encompassing a human organism.

“(b) EFFECTIVE DATE.—

“(1) IN GENERAL.—Subsection (a) shall apply to any application for patent that is pending on, or filed on or after, the date of the enactment of this Act [Sept. 16, 2011].

“(2) PRIOR APPLICATIONS.—Subsection (a) shall not affect the validity of any patent issued on an application to which paragraph (1) does not apply.”

## § 102. Conditions for patentability; novelty

(a) NOVELTY; PRIOR ART.—A person shall be entitled to a patent unless—

(1) the claimed invention was patented, described in a printed publication, or in public use, on sale, or otherwise available to the public before the effective filing date of the claimed invention; or

(2) the claimed invention was described in a patent issued under section 151, or in an application for patent published or deemed published under section 122(b), in which the patent or application, as the case may be, names another inventor and was effectively filed before the effective filing date of the claimed invention.

(b) EXCEPTIONS.—

(1) DISCLOSURES MADE 1 YEAR OR LESS BEFORE THE EFFECTIVE FILING DATE OF THE CLAIMED INVENTION.—A disclosure made 1 year or less before the effective filing date of a claimed invention shall not be prior art to the claimed invention under subsection (a)(1) if—

(A) the disclosure was made by the inventor or joint inventor or by another who obtained the subject matter disclosed directly or indirectly from the inventor or a joint inventor; or

(B) the subject matter disclosed had, before such disclosure, been publicly disclosed by the inventor or a joint inventor or another who obtained the subject matter disclosed directly or indirectly from the inventor or a joint inventor.

(2) DISCLOSURES APPEARING IN APPLICATIONS AND PATENTS.—A disclosure shall not be prior art to a claimed invention under subsection (a)(2) if—

(A) the subject matter disclosed was obtained directly or indirectly from the inventor or a joint inventor;

(B) the subject matter disclosed had, before such subject matter was effectively filed under subsection (a)(2), been publicly disclosed by the inventor or a joint inventor or another who obtained the subject matter disclosed directly or indirectly from the inventor or a joint inventor; or

(C) the subject matter disclosed and the claimed invention, not later than the effective filing date of the claimed invention, were owned by the same person or subject to an obligation of assignment to the same person.

(c) COMMON OWNERSHIP UNDER JOINT RESEARCH AGREEMENTS.—Subject matter disclosed and a claimed invention shall be deemed to have been owned by the same person or subject to an obligation of assignment to the same person in applying the provisions of subsection (b)(2)(C) if—

(1) the subject matter disclosed was developed and the claimed invention was made by, or on behalf of, 1 or more parties to a joint research agreement that was in effect on or before the effective filing date of the claimed invention;

(2) the claimed invention was made as a result of activities undertaken within the scope of the joint research agreement; and

(3) the application for patent for the claimed invention discloses or is amended to disclose the names of the parties to the joint research agreement.

(d) PATENTS AND PUBLISHED APPLICATIONS EFFECTIVE AS PRIOR ART.—For purposes of determining whether a patent or application for patent is prior art to a claimed invention under subsection (a)(2), such patent or application shall be considered to have been effectively filed, with respect to any subject matter described in the patent or application—

(1) if paragraph (2) does not apply, as of the actual filing date of the patent or the application for patent; or

(2) if the patent or application for patent is entitled to claim a right of priority under section 119, 365(a), 365(b), 386(a), or 386(b), or to claim the benefit of an earlier filing date under section 120, 121, 365(c), or 386(c), based upon 1 or more prior filed applications for patent, as of the filing date of the earliest such application that describes the subject matter.

(July 19, 1952, ch. 950, 66 Stat. 797; Pub. L. 92-358, §2, July 28, 1972, 86 Stat. 502; Pub. L. 94-131, §5,

Nov. 14, 1975, 89 Stat. 691; Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §§4505, 4806], Nov. 29, 1999, 113 Stat. 1536, 1501A-565, 1501A-590; Pub. L. 107-273, div. C, title III, §13205(1), Nov. 2, 2002, 116 Stat. 1902; Pub. L. 112-29, §3(b)(1), Sept. 16, 2011, 125 Stat. 285; Pub. L. 112-211, title I, §102(2), Dec. 18, 2012, 126 Stat. 1531.)

#### HISTORICAL AND REVISION NOTES

Paragraphs (a), (b), and (c) are based on Title 35, U.S.C., 1946 ed., §31 (R.S. 4886, amended (1) Mar. 3, 1897, ch. 391, §1, 29 Stat. 692, (2) May 23, 1930, ch. 312, §1, 46 Stat. 376, (3) Aug. 5, 1939, ch. 450, §1, 53 Stat. 1212).

No change is made in these paragraphs other than that due to division into lettered paragraphs. The interpretation by the courts of paragraph (a) as being more restricted than the actual language would suggest (for example, “known” has been held to mean “publicly known”) is recognized but no change in the language is made at this time. Paragraph (a) together with section 104 contains the substance of Title 35, U.S.C., 1946 ed., §72 (R.S. 4923).

Paragraph (d) is based on Title 35, U.S.C., 1946 ed., §32, first paragraph (R.S. 4887 (first paragraph), amended (1) Mar. 3, 1897, ch. 391, §3, 29 Stat. 692, 693, (2) Mar. 3, 1903, ch. 1019, §1, 32 Stat. 1225, 1226, (3) June 19, 1936, ch. 594, 49 Stat. 1529).

The section has been changed so that the prior foreign patent is not a bar unless it was granted before the filing of the application in the United States.

Paragraph (e) is new and enacts the rule of *Milburn v. Davis-Bournonville*, 270 U.S. 390, by reason of which a United States patent disclosing an invention dates from the date of filing the application for the purpose of anticipating a subsequent inventor.

Paragraph (f) indicates the necessity for the inventor as the party applying for patent. Subsequent sections permit certain persons to apply in place of the inventor under special circumstances.

Paragraph (g) is derived from Title 35, U.S.C., 1946 ed., §69 (R.S. 4920, amended (1) Mar. 3, 1897, ch. 391, §2, 29 Stat. 692, (2) Aug. 5, 1939, ch. 450, §1, 53 Stat. 1212), the second defense recited in this section. This paragraph retains the present rules of law governing the determination of priority of invention.

Language relating specifically to designs is omitted for inclusion in subsequent sections.

#### Editorial Notes

##### AMENDMENTS

2012—Subsec. (d)(2). Pub. L. 112-211 substituted “to claim a right of priority under section 119, 365(a), 365(b), 386(a), or 386(b), or to claim the benefit of an earlier filing date under section 120, 121, 365(c), or 386(c)” for “to claim a right of priority under section 119, 365(a), or 365(b), or to claim the benefit of an earlier filing date under section 120, 121, or 365(c)”.

2011—Pub. L. 112-29 amended section generally. Prior to amendment, section related to conditions for patentability; novelty and loss of right to patent.

2002—Subsec. (e). Pub. L. 107-273, amended Pub. L. 106-113, §1000(a)(9) [title IV, §4505]. See 1999 Amendment note below. Prior to being amended by Pub. L. 107-273, Pub. L. 106-113, §1000(a)(9) [title IV, §4505], had amended subsec. (e) to read as follows: “The invention was described in—

“(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

“(2) a patent granted on an application for patent by another filed in the United States before the in-

vention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a); or”.

1999—Subsec. (e). Pub. L. 106–113, §1000(a)(9) [title IV, §4505], as amended by Pub. L. 107–273, amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent, or”.

Subsec. (g). Pub. L. 106–113, §1000(a)(9) [title IV, §4806], amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: “before the applicant’s invention thereof the invention was made in this country by another who had not abandoned, suppressed, or concealed it. In determining priority of invention there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time prior to conception by the other.”

1975—Par. (e). Pub. L. 94–131 inserted provision for nonentitlement to a patent where the invention was described in a patent granted on an international application by another who has fulfilled the requirements of pars. (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

1972—Subsec. (d). Pub. L. 92–358 inserted reference to inventions that were the subject of an inventors’ certificate.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–211 effective on the later of the date that is 1 year after Dec. 18, 2012, or the date that the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs enters into force with respect to the United States (May 13, 2015), and applicable only to certain applications filed on and after that effective date and patents issuing thereon, with certain exceptions, see section 103 of Pub. L. 112–211, set out as a note under section 100 of this title.

##### EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–29 effective upon the expiration of the 18-month period beginning on Sept. 16, 2011, and applicable to certain applications for patent and any patents issuing thereon, see section 3(n) of Pub. L. 112–29, set out as an Effective Date of 2011 Amendment; Savings Provisions note under section 100 of this title.

##### EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 1000(a)(9) [title IV, §4505] of Pub. L. 106–113 effective Nov. 29, 2000 and applicable to all patents and all applications for patents pending on or filed after Nov. 29, 2000, see section 1000(a)(9) [title IV, §4508] of Pub. L. 106–113, as amended, set out as a note under section 10 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.

##### EFFECTIVE DATE OF 1972 AMENDMENT

Pub. L. 92–358, §3(b), July 28, 1972, 86 Stat. 502, provided that: “Section 2 of this Act [amending this sec-

tion] shall take effect six months from the date when Articles 1 to 12 of the Paris Convention of March 20, 1883, for the Protection of Industrial Property, as revised at Stockholm, July 14, 1967, come into force with respect to the United States [Aug. 25, 1973] and shall apply to applications thereafter filed in the United States.”

#### SAVINGS PROVISIONS

Provisions of former subsec. (g) of this section, as in effect on the day before the expiration of the 18-month period beginning on Sept. 16, 2011, apply to each claim of certain applications for patent, and certain patents issued thereon, for which the amendments made by section 3 of Pub. L. 112–29 also apply, see section 3(n)(2) of Pub. L. 112–29, set out as an Effective Date of 2011 Amendment; Savings Provisions note under section 100 of this title.

#### CONTINUITY OF INTENT UNDER THE CREATE ACT

Pub. L. 112–29, §3(b)(2), Sept. 16, 2011, 125 Stat. 287, provided that: “The enactment of section 102(c) of title 35, United States Code, under paragraph (1) of this subsection is done with the same intent to promote joint research activities that was expressed, including in the legislative history, through the enactment of the Cooperative Research and Technology Enhancement Act of 2004 (Public Law 108–453; the ‘CREATE Act’) [see Short Title of 2004 Amendment note set out under section 1 of this title], the amendments of which are stricken by subsection (c) of this section [amending section 103 of this title]. The United States Patent and Trademark Office shall administer section 102(c) of title 35, United States Code, in a manner consistent with the legislative history of the CREATE Act that was relevant to its administration by the United States Patent and Trademark Office.”

#### TAX STRATEGIES DEEMED WITHIN THE PRIOR ART

Pub. L. 112–29, §14, Sept. 16, 2011, 125 Stat. 327, provided that:

“(a) IN GENERAL.—For purposes of evaluating an invention under section 102 or 103 of title 35, United States Code, any strategy for reducing, avoiding, or deferring tax liability, whether known or unknown at the time of the invention or application for patent, shall be deemed insufficient to differentiate a claimed invention from the prior art.

“(b) DEFINITION.—For purposes of this section, the term ‘tax liability’ refers to any liability for a tax under any Federal, State, or local law, or the law of any foreign jurisdiction, including any statute, rule, regulation, or ordinance that levies, imposes, or assesses such tax liability.

“(c) EXCLUSIONS.—This section does not apply to that part of an invention that—

“(1) is a method, apparatus, technology, computer program product, or system, that is used solely for preparing a tax or information return or other tax filing, including one that records, transmits, transfers, or organizes data related to such filing; or

“(2) is a method, apparatus, technology, computer program product, or system used solely for financial management, to the extent that it is severable from any tax strategy or does not limit the use of any tax strategy by any taxpayer or tax advisor.

“(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to imply that other business methods are patentable or that other business method patents are valid.

“(e) EFFECTIVE DATE; APPLICABILITY.—This section shall take effect on the date of the enactment of this Act [Sept. 16, 2011] and shall apply to any patent application that is pending on, or filed on or after, that date, and to any patent that is issued on or after that date.”

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

Relief as to filing date of patent application or patent affected by postal situation beginning on Mar. 18, 1970,

and ending on or about Mar. 30, 1970, but patents issued with earlier filing dates not effective as prior art under subsec. (e) of this section as of such earlier filing dates, see section 1(a) of Pub. L. 92-34, formerly set out in a note under section 111 of this title.

### § 103. Conditions for patentability; non-obvious subject matter

A patent for a claimed invention may not be obtained, notwithstanding that the claimed invention is not identically disclosed as set forth in section 102, if the differences between the claimed invention and the prior art are such that the claimed invention as a whole would have been obvious before the effective filing date of the claimed invention to a person having ordinary skill in the art to which the claimed invention pertains. Patentability shall not be negated by the manner in which the invention was made.

(July 19, 1952, ch. 950, 66 Stat. 798; Pub. L. 98-622, title I, § 103, Nov. 8, 1984, 98 Stat. 3384; Pub. L. 104-41, § 1, Nov. 1, 1995, 109 Stat. 351; Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4807(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A-591; Pub. L. 108-453, § 2, Dec. 10, 2004, 118 Stat. 3596; Pub. L. 112-29, §§ 3(c), 20(j), Sept. 16, 2011, 125 Stat. 287, 335.)

#### HISTORICAL AND REVISION NOTES

There is no provision corresponding to the first sentence explicitly stated in the present statutes, but the refusal of patents by the Patent Office, and the holding of patents invalid by the courts, on the ground of lack of invention or lack of patentable novelty has been followed since at least as early as 1850. This paragraph is added with the view that an explicit statement in the statute may have some stabilizing effect, and also to serve as a basis for the addition at a later time of some criteria which may be worked out.

The second sentence states that patentability as to this requirement is not to be negated by the manner in which the invention was made, that is, it is immaterial whether it resulted from long toil and experimentation or from a flash of genius.

#### Editorial Notes

##### AMENDMENTS

2011—Pub. L. 112-29, § 3(c), amended section generally. Prior to amendment, section consisted of subsections. (a) to (c) and related to conditions for patentability; non-obvious subject matter.

Subsecs. (a), (c)(1). Pub. L. 112-29, § 20(j), struck out “of this title” after “102”.

2004—Subsec. (c). Pub. L. 108-453 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.”

1999—Subsec. (c). Pub. L. 106-113 substituted “one or more of subsections (e), (f), and (g)” for “subsection (f) or (g)”.

1995—Pub. L. 104-41 designated first and second pars. as subsections. (a) and (c), respectively, and added subsec. (b).

1984—Pub. L. 98-622 inserted “Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this sec-

tion where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.”

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by section 3(c) of Pub. L. 112-29 effective upon the expiration of the 18-month period beginning on Sept. 16, 2011, and applicable to certain applications for patent and any patents issuing thereon, see section 3(n) of Pub. L. 112-29, set out as an Effective Date of 2011 Amendment; Savings Provisions note under section 100 of this title.

Amendment by section 20(j) of Pub. L. 112-29 effective upon the expiration of the 1-year period beginning on Sept. 16, 2011, and applicable to proceedings commenced on or after that effective date, see section 20(l) of Pub. L. 112-29, set out as a note under section 2 of this title.

##### EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-453, § 3, Dec. 10, 2004, 118 Stat. 3596, provided that:

“(a) IN GENERAL.—The amendments made by this Act [amending this section] shall apply to any patent granted on or after the date of the enactment of this Act [Dec. 10, 2004].

“(b) SPECIAL RULE.—The amendments made by this Act shall not affect any final decision of a court or the United States Patent and Trademark Office rendered before the date of the enactment of this Act, and shall not affect the right of any party in any action pending before the United States Patent and Trademark Office or a court on the date of the enactment of this Act to have that party’s rights determined on the basis of the provisions of title 35, United States Code, in effect on the day before the date of the enactment of this Act.”

##### EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4807(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A-591, provided that: “The amendment made by this section [amending this section] shall apply to any application for patent filed on or after the date of the enactment of this Act [Nov. 29, 1999].”

##### EFFECTIVE DATE OF 1995 AMENDMENT

Pub. L. 104-41, § 3, Nov. 1, 1995, 109 Stat. 352, provided that: “The amendments made by section 1 [amending this section] shall apply to any application for patent filed on or after the date of enactment of this Act [Nov. 1, 1995] and to any application for patent pending on such date of enactment, including (in either case) an application for the reissuance of a patent.”

##### EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-622, title I, § 106, Nov. 8, 1984, 98 Stat. 3385, provided that:

“(a) Subject to subsections (b), (c), (d), and (e) of this section, the amendments made by this Act [probably should be “this title”, meaning title I of Pub. L. 98-622, enacting section 157 of this title, amending this section and sections 116, 120, 135, and 271 of this title, and enacting a provision set out as a note under section 157 of this title] shall apply to all United States patents granted before, on, or after the date of enactment of this Act [Nov. 8, 1984], and to all applications for United States patents pending on or filed after the date of enactment.

“(b) The amendments made by this Act shall not affect any final decision made by the court or the Patent and Trademark Office before the date of enactment of this Act [Nov. 8, 1984], with respect to a patent or application for patent, if no appeal from such decision is pending and the time for filing an appeal has expired.

“(c) Section 271(f) of title 35, United States Code, added by section 101 of this Act shall apply only to the

supplying, or causing to be supplied, of any component or components of a patented invention after the date of enactment of this Act [Nov. 8, 1984].

“(d) No United States patent granted before the date of enactment of this Act [Nov. 8, 1984] shall abridge or affect the right of any person or his successors in business who made, purchased, or used prior to such effective date anything protected by the patent, to continue the use of, or to sell to others to be used or sold, the specific thing so made, purchased, or used, if the patent claims were invalid or otherwise unenforceable on a ground obviated by section 103 or 104 of this Act [amending this section and sections 116 and 120 of this title] and the person made, purchased, or used the specific thing in reasonable reliance on such invalidity or unenforceability. If a person reasonably relied on such invalidity or unenforceability, the court before which such matter is in question may provide for the continued manufacture, use, or sale of the thing made, purchased, or used as specified, or for the manufacture, use, or sale of which substantial preparation was made before the date of enactment of this Act, and it may also provide for the continued practice of any process practiced, or for the practice of which substantial preparation was made, prior to the date of enactment, to the extent and under such terms as the court deems equitable for the protection of investments made or business commenced before the date of enactment.

“(e) The amendments made by this Act shall not affect the right of any party in any case pending in court on the date of enactment [Nov. 8, 1984] to have their rights determined on the basis of the substantive law in effect prior to the date of enactment.”

**[§ 104. Repealed. Pub. L. 112–29, § 3(d), Sept. 16, 2011, 125 Stat. 287]**

Section, act July 19, 1952, ch. 950, 66 Stat. 798; Pub. L. 93–596, § 1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 94–131, § 6, Nov. 14, 1975, 89 Stat. 691; Pub. L. 98–622, title IV, § 403(a), Nov. 8, 1984, 98 Stat. 3392; Pub. L. 103–182, title III, § 331, Dec. 8, 1993, 107 Stat. 2113; Pub. L. 103–465, title V, § 531(a), Dec. 8, 1994, 108 Stat. 4982; Pub. L. 106–113, div. B, § 1000(a)(9) [title IV, § 4732(a)(10)(A)], Nov. 29, 1999, 113 Stat. 1536, 1501A–582; Pub. L. 107–273, div. C, title III, § 13206(b)(1)(B), Nov. 2, 2002, 116 Stat. 1906; Pub. L. 112–29, § 20(j), Sept. 16, 2011, 125 Stat. 335, related to inventions made abroad.

**Statutory Notes and Related Subsidiaries**

**EFFECTIVE DATE OF REPEAL**

Repeal effective upon the expiration of the 18-month period beginning on Sept. 16, 2011, and applicable to certain applications for patent and any patents issuing thereon, see section 3(n) of Pub. L. 112–29, set out as an Effective Date of 2011 Amendment; Savings Provisions note under section 100 of this title.

**§ 105. Inventions in outer space**

(a) Any invention made, used or sold in outer space on a space object or component thereof under the jurisdiction or control of the United States shall be considered to be made, used or sold within the United States for the purposes of this title, except with respect to any space object or component thereof that is specifically identified and otherwise provided for by an international agreement to which the United States is a party, or with respect to any space object or component thereof that is carried on the registry of a foreign state in accordance with the Convention on Registration of Objects Launched into Outer Space.

(b) Any invention made, used or sold in outer space on a space object or component thereof that is carried on the registry of a foreign state

in accordance with the Convention on Registration of Objects Launched into Outer Space, shall be considered to be made, used or sold within the United States for the purposes of this title if specifically so agreed in an international agreement between the United States and the state of registry.

(Added Pub. L. 101–580, § 1(a), Nov. 15, 1990, 104 Stat. 2863.)

**Statutory Notes and Related Subsidiaries**

**EFFECTIVE DATE; SPECIAL RULES**

Pub. L. 101–580, § 2, Nov. 15, 1990, 104 Stat. 2863, provided that:

“(a) **EFFECTIVE DATE.**—Subject to subsections (b), (c), and (d) of this section, the amendments made by the first section of this Act [enacting this section] shall apply to all United States patents granted before, on, or after the date of enactment of this Act [Nov. 15, 1990], and to all applications for United States patents pending on or filed on or after such date of enactment.

“(b) **FINAL DECISIONS.**—The amendments made by the first section of this Act [enacting this section] shall not affect any final decision made by a court or the Patent and Trademark Office before the date of enactment of this Act [Nov. 15, 1990] with respect to a patent or an application for a patent, if no appeal from such decision is pending and the time for filing an appeal has expired.

“(c) **PENDING CASES.**—The amendments made by the first section of this Act [enacting this section] shall not affect the right of any party in any case pending in a court on the date of enactment of this Act [Nov. 15, 1990] to have the party’s rights determined on the basis of the substantive law in effect before such date of enactment.

“(d) **NON-APPLICABILITY.**—The amendments made by the first section of this Act [enacting this section] shall not apply to any process, machine, article of manufacture, or composition of matter, an embodiment of which was launched prior to the date of enactment of this Act [Nov. 15, 1990].”

**CHAPTER 11—APPLICATION FOR PATENT**

Sec.

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|------|--|
| 111. | Application.   |
| 112. | Specification.   |
| 113. | Drawings.  |
| 114. | Models, specimens.   |
| 115. | Inventor’s oath or declaration.  |
| 116. | Inventors.   |
| 117. | Death or incapacity of inventor.   |
| 118. | Filing by other than inventor.   |
| 119. | Benefit of earlier filing date; right of priority.                       |
| 120. | Benefit of earlier filing date in the United States.                     |
| 121. | Divisional applications.   |
| 122. | Confidential status of applications; publication of patent applications. |
| 123. | Micro entity defined.  |

**Editorial Notes**

**AMENDMENTS**

2011—Pub. L. 112–29, § 10(g)(2), Sept. 16, 2011, 125 Stat. 319, which directed adding item 123 at the end of this chapter, was executed by adding the item at the end of the table of sections of this chapter, to reflect the probable intent of Congress.

Pub. L. 112–29, § 4(a)(4), Sept. 16, 2011, 125 Stat. 296, amended item 115 generally, substituting “Inventor’s oath or declaration” for “Oath of applicant”.

2002—Pub. L. 107–273, div. C, title III, § 13206(a)(7), Nov. 2, 2002, 116 Stat. 1904, substituted “Inventors” for “Joint inventors” in item 116.