

that effective date, see section 20(l) of Pub. L. 112-29, set out as a note under section 2 of this title.

### § 163. Grant

In the case of a plant patent, the grant shall include the right to exclude others from asexually reproducing the plant, and from using, offering for sale, or selling the plant so reproduced, or any of its parts, throughout the United States, or from importing the plant so reproduced, or any parts thereof, into the United States.

(July 19, 1952, ch. 950, 66 Stat. 804; Pub. L. 105-289, § 3(a), Oct. 27, 1998, 112 Stat. 2781.)

#### HISTORICAL AND REVISION NOTES

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

This provision is from R.S. 4884 (see section 154) amended in language.

#### Editorial Notes

##### AMENDMENTS

1998—Pub. L. 105-289 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: “In the case of a plant patent the grant shall be of the right to exclude others from asexually reproducing the plant or selling or using the plant so reproduced.”

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-289, § 3(b), Oct. 27, 1998, 112 Stat. 2781, provided that: “The amendment made by subsection (a) [amending this section] shall apply to any plant patent issued on or after the date of the enactment of this Act [Oct. 27, 1998].”

##### FINDINGS AND PURPOSES

Pub. L. 105-289, § 2, Oct. 27, 1998, 112 Stat. 2780, provided that:

“(a) FINDINGS.—The Congress makes the following findings:

“(1) The protection provided by plant patents under title 35, United States Code, dating back to 1930, has historically benefited American agriculture and horticulture and the public by providing an incentive for breeders to develop new plant varieties.

“(2) Domestic and foreign agricultural trade is rapidly expanding and is very different from the trade of the past. An unforeseen ambiguity in the provisions of title 35, United States Code, is undermining the orderly collection of royalties due breeders holding United States plant patents.

“(3) Plant parts produced from plants protected by United States plant patents are being taken from illegally reproduced plants and traded in United States markets to the detriment of plant patent holders.

“(4) Resulting lost royalty income inhibits investment in domestic research and breeding activities associated with a wide variety of crops—an area where the United States has historically enjoyed a strong international position. Such research is the foundation of a strong horticultural industry.

“(5) Infringers producing such plant parts from unauthorized plants enjoy an unfair competitive advantage over producers who pay royalties on varieties protected by United States plant patents.

“(b) PURPOSES.—The purposes of this Act [see section 1 of Pub. L. 105-289, set out as a Short Title of 1998 Amendments note under section 1 of this title] are—

“(1) to clearly and explicitly provide that title 35, United States Code, protects the owner of a plant patent against the unauthorized sale of plant parts taken from plants illegally reproduced;

“(2) to make the protections provided under such title more consistent with those provided breeders of sexually reproduced plants under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.), as amended by the Plant Variety Protection Act Amendments of 1994 (Public Law 103-349); and

“(3) to strengthen the ability of United States plant patent holders to enforce their patent rights with regard to importation of plant parts produced from plants protected by United States plant patents, which are propagated without the authorization of the patent holder.”

### § 164. Assistance of Department of Agriculture

The President may by Executive order direct the Secretary of Agriculture, in accordance with the requests of the Director, for the purpose of carrying into effect the provisions of this title with respect to plants (1) to furnish available information of the Department of Agriculture, (2) to conduct through the appropriate bureau or division of the Department research upon special problems, or (3) to detail to the Director officers and employees of the Department.

(July 19, 1952, ch. 950, 66 Stat. 804; 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.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 56a (May 23, 1930, ch. 312, § 4, 46 Stat. 376).

Language is changed.

#### Editorial Notes

##### AMENDMENTS

2002—Pub. L. 107-273 made technical correction to directory language of Pub. L. 106-113. See 1999 Amendment note below.

1999—Pub. L. 106-113, as amended by Pub. L. 107-273, substituted “Director” for “Commissioner” in two places.

#### Statutory Notes and Related Subsidiaries

##### 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] of Pub. L. 106-113, set out as a note under section 1 of this title.

#### Executive Documents

##### TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of Agriculture, with certain exceptions, to Secretary of Agriculture, with power to delegate, see Reorg. Plan No. 2 of 1953, § 1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

### CHAPTER 16—DESIGNS

Sec.	
171.	Patents for designs.
172.	Right of priority.
173.	Term of design patent.

### § 171. Patents for designs

(a) IN GENERAL.—Whoever invents any new, original and ornamental design for an article of

manufacture may obtain a patent therefor, subject to the conditions and requirements of this title.

(b) **APPLICABILITY OF THIS TITLE.**—The provisions of this title relating to patents for inventions shall apply to patents for designs, except as otherwise provided.

(c) **FILING DATE.**—The filing date of an application for patent for design shall be the date on which the specification as prescribed by section 112 and any required drawings are filed.

(July 19, 1952, ch. 950, 66 Stat. 805; Pub. L. 112-211, title II, §202(a), Dec. 18, 2012, 126 Stat. 1535.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §73 (R.S. 4929, amended (1) May 9, 1902, ch. 783, 32 Stat. 193, (2) Aug. 5, 1939, ch. 450, §1, 53 Stat. 1212; R.S. 4933).

The list of conditions specified in the corresponding section of existing statute is omitted as unnecessary in view of the general inclusion of all conditions applying to other patents. Language is changed.

#### Editorial Notes

##### AMENDMENTS

2012—Pub. L. 112-211 designated first and second pars. as subsecs. (a) and (b), respectively, inserted headings, and added subsec. (c).

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-211 effective on the date that is 1 year after Dec. 18, 2012, applicable to patents issued before, on, or after that effective date and patent applications pending on or filed after that effective date, and not effective with respect to patents in litigation commenced before that effective date, see section 203 of Pub. L. 112-211, set out as an Effective Date note under section 27 of this title.

#### § 172. Right of priority

The right of priority provided for by subsections (a) through (d) of section 119 shall be six months in the case of designs. The right of priority provided for by section 119(e) shall not apply to designs.

(July 19, 1952, ch. 950, 66 Stat. 805; Pub. L. 103-465, title V, §532(c)(2), Dec. 8, 1994, 108 Stat. 4987; Pub. L. 112-29, §§3(g)(1), 20(j), Sept. 16, 2011, 125 Stat. 288, 335.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §32, part (R.S. 4887, amended (1) Mar. 3, 1903, ch. 1019, §1, 32 Stat. 1225, 1226, (2) June 19, 1936, ch. 594, 49 Stat. 1529, (3) Aug. 5, 1939, ch. 450, §1, 53 Stat. 1212).

This provision is taken from R.S. 4887 (see section 119) and made a separate section.

#### Editorial Notes

##### AMENDMENTS

2011—Pub. L. 112-29, §20(j), struck out “of this title” after “119” and after “119(e)”.

Pub. L. 112-29, §3(g)(1), struck out “and the time specified in section 102(d)” before “shall be six months”.

1994—Pub. L. 103-465 substituted “subsections (a) through (d) of section 119” for “section 119” and inserted at end “The right of priority provided for by section 119(e) of this title shall not apply to designs.”

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by section 3(g)(1) 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 1994 AMENDMENT

Amendment by 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.

#### § 173. Term of design patent

Patents for designs shall be granted for the term of 15 years from the date of grant.

(July 19, 1952, ch. 950, 66 Stat. 805; Pub. L. 97-247, §16, Aug. 27, 1982, 96 Stat. 321; Pub. L. 103-465, title V, §532(c)(3), Dec. 8, 1994, 108 Stat. 4987; Pub. L. 112-211, title I, §102(7), Dec. 18, 2012, 126 Stat. 1532.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §77 (R.S. 4931). Language is changed slightly.

#### Editorial Notes

##### AMENDMENTS

2012—Pub. L. 112-211 substituted “15 years” for “fourteen years”.

1994—Pub. L. 103-465 inserted “from the date of grant” after “years”.

1982—Pub. L. 97-247 substituted “Patents for designs shall be granted for the term of fourteen years” for “Patents for designs may be granted for the term of three years and six months, or for seven years, or for fourteen years, as the applicant, in his application, elects”.

#### 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, see section 103 of Pub. L. 112-211, set out as a note under section 100 of this title.

##### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by 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.

##### 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.

## CHAPTER 17—SECRECY OF CERTAIN INVENTIONS AND FILING APPLICATIONS IN FOREIGN COUNTRY

Sec.	
181.	Secrecy of certain inventions and withholding of patent.
182.	Abandonment of invention for unauthorized disclosure.
183.	Right to compensation.
184.	Filing of application in foreign country.
185.	Patent barred for filing without license.
186.	Penalty.
187.	Nonapplicability to certain persons.
188.	Rules and regulations, delegation of power.

### Editorial Notes

#### AMENDMENTS

2002—Pub. L. 107-273, div. C, title III, §13206(a)(10), Nov. 2, 2002, 116 Stat. 1904, substituted “to” for “of” in item 183.

### § 181. Secrecy of certain inventions and withholding of patent

Whenever publication or disclosure by the publication of an application or by the grant of a patent on an invention in which the Government has a property interest might, in the opinion of the head of the interested Government agency, be detrimental to the national security, the Commissioner of Patents upon being so notified shall order that the invention be kept secret and shall withhold the publication of the application or the grant of a patent therefor under the conditions set forth hereinafter.

Whenever the publication or disclosure of an invention by the publication of an application or by the granting of a patent, in which the Government does not have a property interest, might, in the opinion of the Commissioner of Patents, be detrimental to the national security, he shall make the application for patent in which such invention is disclosed available for inspection to the Atomic Energy Commission, the Secretary of Defense, and the chief officer of any other department or agency of the Government designated by the President as a defense agency of the United States.

Each individual to whom the application is disclosed shall sign a dated acknowledgment thereof, which acknowledgment shall be entered in the file of the application. If, in the opinion of the Atomic Energy Commission, the Secretary of a Defense Department, or the chief officer of another department or agency so designated, the publication or disclosure of the invention by the publication of an application or by the granting of a patent therefor would be detrimental to the national security, the Atomic Energy Commission, the Secretary of a Defense Department, or such other chief officer shall notify the Commissioner of Patents and the Commissioner of Patents shall order that the invention be kept secret and shall withhold the publication of the application or the grant of a patent for such period as the national interest requires, and notify the applicant thereof. Upon proper showing by the head of the department or agency who caused the secrecy order to be issued that the examination of the application might jeopardize the national interest, the Commissioner of Patents shall thereupon main-

tain the application in a sealed condition and notify the applicant thereof. The owner of an application which has been placed under a secrecy order shall have a right to appeal from the order to the Secretary of Commerce under rules prescribed by him.

An invention shall not be ordered kept secret and the publication of the application or the grant of a patent withheld for a period of more than one year. The Commissioner of Patents shall renew the order at the end thereof, or at the end of any renewal period, for additional periods of one year upon notification by the head of the department or the chief officer of the agency who caused the order to be issued that an affirmative determination has been made that the national interest continues so to require. An order in effect, or issued, during a time when the United States is at war, shall remain in effect for the duration of hostilities and one year following cessation of hostilities. An order in effect, or issued, during a national emergency declared by the President shall remain in effect for the duration of the national emergency and six months thereafter. The Commissioner of Patents may rescind any order upon notification by the heads of the departments and the chief officers of the agencies who caused the order to be issued that the publication or disclosure of the invention is no longer deemed detrimental to the national security.

(July 19, 1952, ch. 950, 66 Stat. 805; Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §§4507(7), 4732(a)(10)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A-566, 1501A-582.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §151 (Feb. 1, 1952, ch. 4, §1, 66 Stat. 3, 4).

Language is changed.

### Editorial Notes

#### AMENDMENTS

1999—Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(10)(B)], substituted “Commissioner of Patents” for “Commissioner” wherever appearing.

Pub. L. 106-113, §1000(a)(9) [title IV, §4507(7)(A)], in first par., inserted “by the publication of an application or” after “disclosure” and “the publication of the application or” after “withhold”.

Pub. L. 106-113, §1000(a)(9) [title IV, §4507(7)(B)], inserted “by the publication of an application or” after “disclosure of an invention” in second par.

Pub. L. 106-113, §1000(a)(9) [title IV, §4507(7)(C)], in third par., inserted “by the publication of the application or” after “disclosure of the invention” and “the publication of the application or” after “withhold”.

Pub. L. 106-113, §1000(a)(9) [title IV, §4507(7)(D)], inserted “the publication of an application or” after “kept secret and” in first sentence of fourth par.

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 1000(a)(9) [title IV, §4507(7)] of Pub. L. 106-113 effective Nov. 29, 2000, and applicable only to applications (including international applications designating the United States) filed on or after that date, 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.

Amendment by section 1000(a)(9) [title IV, §4732(a)(10)(B)] of Pub. L. 106-113 effective 4 months