

(Added Pub. L. 112-211, title I, §101(a), Dec. 18, 2012, 126 Stat. 1529.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section 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 an Effective Date of 2012 Amendment note under section 100 of this title.

§ 385. Effect of international design application

An international design application designating the United States shall have the effect, for all purposes, from its filing date determined in accordance with section 384, of an application for patent filed in the Patent and Trademark Office pursuant to chapter 16.

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§ 386. Right of priority

(a) NATIONAL APPLICATION.—In accordance with the conditions and requirements of subsections (a) through (d) of section 119 and section 172, a national application shall be entitled to the right of priority based on a prior international design application that designated at least 1 country other than the United States.

(b) PRIOR FOREIGN APPLICATION.—In accordance with the conditions and requirements of subsections (a) through (d) of section 119 and section 172 and the treaty and the Regulations, an international design application designating the United States shall be entitled to the right of priority based on a prior foreign application, a prior international application as defined in section 351(c) designating at least 1 country other than the United States, or a prior international design application designating at least 1 country other than the United States.

(c) PRIOR NATIONAL APPLICATION.—In accordance with the conditions and requirements of section 120, an international design application designating the United States shall be entitled to the benefit of the filing date of a prior national application, a prior international application as defined in section 351(c) designating the United States, or a prior international design application designating the United States, and a national application shall be entitled to the benefit of the filing date of a prior international design application designating the United States. If any claim for the benefit of an earlier filing

date is based on a prior international application as defined in section 351(c) which designated but did not originate in the United States or a prior international design application which designated but did not originate in the United States, the Director may require the filing in the Patent and Trademark Office of a certified copy of such application together with a translation thereof into the English language, if it was filed in another language.

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§ 387. Relief from prescribed time limits

An applicant's failure to act within prescribed time limits in connection with requirements pertaining to an international design application may be excused as to the United States upon a showing satisfactory to the Director of unintentional delay and under such conditions, including a requirement for payment of the fee specified in section 41(a)(7), as may be prescribed by the Director.

(Added Pub. L. 112-211, title I, §101(a), Dec. 18, 2012, 126 Stat. 1530.)

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§ 388. Withdrawn or abandoned international design application

Subject to sections 384 and 387, if an international design application designating the United States is withdrawn, renounced or canceled or considered withdrawn or abandoned, either generally or as to the United States, under the conditions of the treaty and the Regulations, the designation of the United States shall have no effect after the date of withdrawal, renunciation, cancellation, or abandonment and shall be considered as not having been made, unless a claim for benefit of a prior filing date under section 386(c) was made in a national application, or an international design application designating the United States, or a claim for benefit under section 365(c) was made in an international application designating the United States, filed before the date of such withdrawal,

renunciation, cancellation, or abandonment. However, such withdrawn, renounced, canceled, or abandoned international design application may serve as the basis for a claim of priority under subsections (a) and (b) of section 386, or under subsection (a) or (b) of section 365, if it designated a country other than the United States.

(Added Pub. L. 112-211, title I, §101(a), Dec. 18, 2012, 126 Stat. 1530.)

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§ 389. Examination of international design application

(a) **IN GENERAL.**—The Director shall cause an examination to be made pursuant to this title of an international design application designating the United States.

(b) **APPLICABILITY OF CHAPTER 16.**—All questions of substance and, unless otherwise required by the treaty and Regulations, procedures regarding an international design application designating the United States shall be determined as in the case of applications filed under chapter 16.

(c) **FEES.**—The Director may prescribe fees for filing international design applications, for designating the United States, and for any other processing, services, or materials relating to international design applications, and may provide for later payment of such fees, including surcharges for later submission of fees.

(d) **ISSUANCE OF PATENT.**—The Director may issue a patent based on an international design application designating the United States, in accordance with the provisions of this title. Such patent shall have the force and effect of a patent issued on an application filed under chapter 16.

(Added Pub. L. 112-211, title I, §101(a), Dec. 18, 2012, 126 Stat. 1530.)

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§ 390. Publication of international design application

The publication under the treaty of an international design application designating the United States shall be deemed a publication under section 122(b).

(Added Pub. L. 112-211, title I, §101(a), Dec. 18, 2012, 126 Stat. 1531.)

Statutory Notes and Related Subsidiaries

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