

after the date of the enactment of this Act [Jan. 14, 2013], regardless of whether December 1 is before or after the date on which such member's term would terminate if this Act had not been enacted.”

§ 6. Patent Trial and Appeal Board

(a) IN GENERAL.—There shall be in the Office a Patent Trial and Appeal Board. The Director, the Deputy Director, the Commissioner for Patents, the Commissioner for Trademarks, and the administrative patent judges shall constitute the Patent Trial and Appeal Board. The administrative patent judges shall be persons of competent legal knowledge and scientific ability who are appointed by the Secretary, in consultation with the Director. Any reference in any Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to the Board of Patent Appeals and Interferences is deemed to refer to the Patent Trial and Appeal Board.

(b) DUTIES.—The Patent Trial and Appeal Board shall—

- (1) on written appeal of an applicant, review adverse decisions of examiners upon applications for patents pursuant to section 134(a);
- (2) review appeals of reexaminations pursuant to section 134(b);
- (3) conduct derivation proceedings pursuant to section 135; and
- (4) conduct inter partes reviews and post-grant reviews pursuant to chapters 31 and 32.

(c) 3-MEMBER PANELS.—Each appeal, derivation proceeding, post-grant review, and inter partes review shall be heard by at least 3 members of the Patent Trial and Appeal Board, who shall be designated by the Director. Only the Patent Trial and Appeal Board may grant rehearings.

(d) TREATMENT OF PRIOR APPOINTMENTS.—The Secretary of Commerce may, in the Secretary's discretion, deem the appointment of an administrative patent judge who, before the date of the enactment of this subsection, held office pursuant to an appointment by the Director to take effect on the date on which the Director initially appointed the administrative patent judge. It shall be a defense to a challenge to the appointment of an administrative patent judge on the basis of the judge's having been originally appointed by the Director that the administrative patent judge so appointed was acting as a *de facto* officer.

(Added Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4717(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A-580; amended Pub. L. 107-273, div. C, title III, § 13203(a)(2), Nov. 2, 2002, 116 Stat. 1902; Pub. L. 110-313, § 1(a)(1), Aug. 12, 2008, 122 Stat. 3014; Pub. L. 112-29, § 7(a)(1), Sept. 16, 2011, 125 Stat. 313.)

Editorial Notes

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (d), probably means the date of enactment of Pub. L. 112-29, which amended this section generally and was approved Sept. 16, 2011.

CONSTITUTIONALITY

For information regarding the constitutionality of provisions of subsection (c) of this section, see the

Table of Laws Held Unconstitutional in Whole or in Part by the Supreme Court on the Constitution Annotated website, constitution.congress.gov.

PRIOR PROVISIONS

A prior section 6, acts July 19, 1952, ch. 950, 66 Stat. 793; Pub. L. 92-132, Oct. 5, 1971, 85 Stat. 364; Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 94-131, § 2, Nov. 14, 1975, 89 Stat. 690; Pub. L. 97-247, §§ 7, 13, Aug. 27, 1982, 96 Stat. 320, 321; Pub. L. 102-204, § 8, Dec. 10, 1991, 105 Stat. 1641, related to duties of Commissioner, prior to repeal by Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, §§ 4715(a), 4731], Nov. 29, 1999, 113 Stat. 1536, 1501A-580, 1501A-581, effective 4 months after Nov. 29, 1999.

AMENDMENTS

2011—Pub. L. 112-29 amended section generally. Prior to amendment, section related to the establishment, composition, and function of the Board of Patent Appeals and Interferences and to the appointment of administrative patent judges.

2008—Subsec. (a). Pub. L. 110-313, § 1(a)(1)(A), (B), substituted “Deputy Director” for “Deputy Commissioner” in second sentence and “Secretary of Commerce, in consultation with the Director” for “Director” in last sentence.

Subsecs. (c), (d). Pub. L. 110-313, § 1(a)(1)(C), which directed addition of subsecs. (c) and (d) at end of subsec. (a), was executed by adding subsecs. (c) and (d) at end of section to reflect the probable intent of Congress.

2002—Subsec. (a). Pub. L. 107-273, which directed amendment of subsec. (a) by inserting “the Deputy Commissioner,” after “Commissioner,” was executed by making the insertion after “The Director,” to reflect the probable intent of Congress.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112-29, § 7(e), Sept. 16, 2011, 125 Stat. 315, provided that: “The amendments made by this section [amending this section, sections 134, 141, and 143 of this title, section 1295 of Title 28, Judiciary and Judicial Procedure, section 2182 of Title 42, The Public Health and Welfare, and section 20135 of Title 51, National and Commercial Space Programs] shall take effect upon the expiration of the 1-year period beginning on the date of the enactment of this Act [Sept. 16, 2011] and shall apply to proceedings commenced on or after that effective date, except that—

“(1) the extension of jurisdiction to the United States Court of Appeals for the Federal Circuit to entertain appeals of decisions of the Patent Trial and Appeal Board in reexaminations under the amendment made by subsection (c)(2) [amending section 1295 of Title 28] shall be deemed to take effect on the date of the enactment of this Act and shall extend to any decision of the Board of Patent Appeals and Interferences with respect to a reexamination that is entered before, on, or after the date of the enactment of this Act;

“(2) the provisions of sections 6, 134, and 141 of title 35, United States Code, as in effect on the day before the effective date of the amendments made by this section shall continue to apply to inter partes reexaminations that are requested under section 311 of such title before such effective date;

“(3) the Patent Trial and Appeal Board may be deemed to be the Board of Patent Appeals and Interferences for purposes of appeals of inter partes reexaminations that are requested under section 311 of title 35, United States Code, before the effective date of the amendments made by this section; and

“(4) the Director's [Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office] right under the fourth sentence of section 143 of title 35, United States Code, as amended by subsection (c)(3) of this section, to intervene in an appeal from a decision en-

tered by the Patent Trial and Appeal Board shall be deemed to extend to inter partes reexaminations that are requested under section 311 of such title before the effective date of the amendments made by this section.”

EFFECTIVE DATE

Section effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106-113, set out as an Effective Date of 1999 Amendment note under section 1 of this title.

§ 7. Library

The Director shall maintain a library of scientific and other works and periodicals, both foreign and domestic, in the Patent and Trademark Office to aid the officers in the discharge of their duties.

(July 19, 1952, ch. 950, 66 Stat. 793, §8; Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949; renumbered §7 and amended Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §§4717(1), 4732(a)(10)(A)], Nov. 29, 1999, 113 Stat. 1536, 1501A-580, 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., §10 (R.S. 486).

Some change in language has been made. “Purchased” is changed to “maintained” to include the existing library and keeping it up by additions. The phrase “and other” is added to include legal works. The last phrase of the corresponding section of the existing statute is omitted as unnecessary.

Editorial Notes

PRIOR PROVISIONS

A prior section 7, acts July 19, 1952, ch. 950, 66 Stat. 793; Pub. L. 85-933, §2, Sept. 6, 1958, 72 Stat. 1793; Pub. L. 86-370, §1(b), Sept. 23, 1959, 73 Stat. 650; Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 93-601, §2, Jan. 2, 1975, 88 Stat. 1956; Pub. L. 98-622, title II, §201(a), Nov. 8, 1984, 98 Stat. 3386, established the Board of Patent Appeals and Interferences, prior to repeal by Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §§4717(1), 4731], Nov. 29, 1999, 113 Stat. 1536, 1501A-580, 1501A-581, effective 4 months after Nov. 29, 1999.

AMENDMENTS

2002—Pub. L. 107-273 made technical correction to directory language of Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(10)(A)]. See 1999 Amendment note below.

1999—Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(10)(A)], as amended by Pub. L. 107-273, substituted “Director” for “Commissioner”.

Pub. L. 106-113, §1000(a)(9) [title IV, §4717(1)], renumbered section 8 of this title as this section.

1975—Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”.

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.

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.

§ 8. Classification of patents

The Director may revise and maintain the classification by subject matter of United States

letters patent, and such other patents and printed publications as may be necessary or practicable, for the purpose of determining with readiness and accuracy the novelty of inventions for which applications for patent are filed.

(July 19, 1952, ch. 950, 66 Stat. 794, §9; renumbered §8 and amended Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §§4717(1), 4732(a)(10)(A)], Nov. 29, 1999, 113 Stat. 1536, 1501A-580, 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., §6 note (June 10, 1898, ch. 430, §1, 30 Stat. 440).

Changes in language are made.

Editorial Notes

PRIOR PROVISIONS

A prior section 8 was renumbered section 7 of this title.

AMENDMENTS

2002—Pub. L. 107-273 made technical correction to directory language of Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(10)(A)]. See 1999 Amendment note below.

1999—Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(10)(A)], as amended by Pub. L. 107-273, substituted “Director” for “Commissioner”.

Pub. L. 106-113, §1000(a)(9) [title IV, §4717(1)], renumbered section 9 of this title as this section.

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.

§ 9. Certified copies of records

The Director may furnish certified copies of specifications and drawings of patents issued by the Patent and Trademark Office, and of other records available either to the public or to the person applying therefor.

(July 19, 1952, ch. 950, 66 Stat. 794, §10; Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949; renumbered §9 and amended Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §§4717(1), 4732(a)(10)(A)], Nov. 29, 1999, 113 Stat. 1536, 1501A-580, 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., §14 (Mar. 3, 1891, ch. 541, §1 (part), 26 Stat. 908, 940).

Reference to other records is added. The fee for certification is omitted as it appears in the table of fees.

Editorial Notes

PRIOR PROVISIONS

A prior section 9 was renumbered section 8 of this title.

AMENDMENTS

2002—Pub. L. 107-273 made technical correction to directory language of Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(10)(A)]. See 1999 Amendment note below.

1999—Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(10)(A)], as amended by Pub. L. 107-273, substituted “Director” for “Commissioner”.