

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.

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.

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 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.

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of Title 42, The Public Health and Welfare. See, also, Transfer of Functions notes set out under those sections.

DEFENSE AGENCIES

Department of Homeland Security designated as a defense agency of United States for purposes of this chapter by Executive Order No. 13286, §85, Feb. 28, 2003, 68 F.R. 10632.

§ 182. Abandonment of invention for unauthorized disclosure

The invention disclosed in an application for patent subject to an order made pursuant to section 181 of this title may be held abandoned upon its being established by the Commissioner of Patents that in violation of said order the invention has been published or disclosed or that an application for a patent therefor has been

filed in a foreign country by the inventor, his successors, assigns, or legal representatives, or anyone in privity with him or them, without the consent of the Commissioner of Patents. The abandonment shall be held to have occurred as of the time of violation. The consent of the Commissioner of Patents shall not be given without the concurrence of the heads of the departments and the chief officers of the agencies who caused the order to be issued. A holding of abandonment shall constitute forfeiture by the applicant, his successors, assigns, or legal representatives, or anyone in privity with him or them, of all claims against the United States based upon such invention.

(July 19, 1952, ch. 950, 66 Stat. 806; Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4732(a)(10)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A-582.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §152 (Feb. 1, 1952, ch. 4, §2, 66 Stat. 4).

Language is changed.

AMENDMENTS

1999—Pub. L. 106-113 substituted “Commissioner of Patents” for “Commissioner” wherever appearing.

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.

§ 183. Right to compensation

An applicant, his successors, assigns, or legal representatives, whose patent is withheld as herein provided, shall have the right, beginning at the date the applicant is notified that, except for such order, his application is otherwise in condition for allowance, or February 1, 1952, whichever is later, and ending six years after a patent is issued thereon, to apply to the head of any department or agency who caused the order to be issued for compensation for the damage caused by the order of secrecy and/or for the use of the invention by the Government, resulting from his disclosure. The right to compensation for use shall begin on the date of the first use of the invention by the Government. The head of the department or agency is authorized, upon the presentation of a claim, to enter into an agreement with the applicant, his successors, assigns, or legal representatives, in full settlement for the damage and/or use. This settlement agreement shall be conclusive for all purposes notwithstanding any other provision of law to the contrary. If full settlement of the claim cannot be effected, the head of the department or agency may award and pay to such applicant, his successors, assigns, or legal representatives, a sum not exceeding 75 per centum of the sum which the head of the department or agency considers just compensation for the damage and/or use. A claimant may bring suit against the United States in the United States Court of Federal Claims or in the District Court of the United States for the district in which such claimant is a resident for an amount which when added to the award shall constitute just

compensation for the damage and/or use of the invention by the Government. The owner of any patent issued upon an application that was subject to a secrecy order issued pursuant to section 181 of this title, who did not apply for compensation as above provided, shall have the right, after the date of issuance of such patent, to bring suit in the United States Court of Federal Claims for just compensation for the damage caused by reason of the order of secrecy and/or use by the Government of the invention resulting from his disclosure. The right to compensation for use shall begin on the date of the first use of the invention by the Government. In a suit under the provisions of this section the United States may avail itself of all defenses it may plead in an action under section 1498 of title 28. This section shall not confer a right of action on anyone or his successors, assigns, or legal representatives who, while in the full-time employment or service of the United States, discovered, invented, or developed the invention on which the claim is based.

(July 19, 1952, ch. 950, 66 Stat. 806; Pub. L. 97-164, title I, §160(a)(12), Apr. 2, 1982, 96 Stat. 48; Pub. L. 102-572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §153 (Feb. 1, 1952, ch. 4, §3, 66 Stat. 4, 5).
Language is changed.

AMENDMENTS

1992—Pub. L. 102-572 substituted “United States Court of Federal Claims” for “United States Claims Court” in two places.

1982—Pub. L. 97-164 substituted “United States Claims Court” for “Court of Claims” in two places.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

§ 184. Filing of application in foreign country

Except when authorized by a license obtained from the Commissioner of Patents a person shall not file or cause or authorize to be filed in any foreign country prior to six months after filing in the United States an application for patent or for the registration of a utility model, industrial design, or model in respect of an invention made in this country. A license shall not be granted with respect to an invention subject to an order issued by the Commissioner of Patents pursuant to section 181 of this title without the concurrence of the head of the departments and the chief officers of the agencies who caused the order to be issued. The license may be granted retroactively where an application has been filed abroad through error and without deceptive intent and the application does not disclose an invention within the scope of section 181 of this title.

The term “application” when used in this chapter includes applications and any modifications, amendments, or supplements thereto, or divisions thereof.

The scope of a license shall permit subsequent modifications, amendments, and supplements containing additional subject matter if the application upon which the request for the license is based is not, or was not, required to be made available for inspection under section 181 of this title and if such modifications, amendments, and supplements do not change the general nature of the invention in a manner which would require such application to be made available for inspection under such section 181. In any case in which a license is not, or was not, required in order to file an application in any foreign country, such subsequent modifications, amendments, and supplements may be made, without a license, to the application filed in the foreign country if the United States application was not required to be made available for inspection under section 181 and if such modifications, amendments, and supplements do not, or did not, change the general nature of the invention in a manner which would require the United States application to have been made available for inspection under such section 181.

(July 19, 1952, ch. 950, 66 Stat. 807; Pub. L. 100-418, title IX, §9101(b)(1), Aug. 23, 1988, 102 Stat. 1567; Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4732(a)(10)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A-582.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §154 (Feb. 1, 1952, ch. 4, §4, 66 Stat. 5).

Language is changed.

AMENDMENTS

1999—Pub. L. 106-113 substituted “Commissioner of Patents” for “Commissioner” two places in first par.

1988—Pub. L. 100-418, §9101(b)(1)(A), substituted “filed abroad through error and without deceptive intent” for “inadvertently filed abroad” in first par.

Pub. L. 100-418, §9101(b)(1)(B), added third par. relating to scope of a license.

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 1988 AMENDMENT

Section 9101(d) of Pub. L. 100-418 provided that:

“(1) Subject to paragraphs (2), (3), and (4) of this subsection, the amendments made by this section [amending sections 184 to 186 of this title] shall apply to all United States patents granted before, on, or after the date of enactment of this section [Aug. 23, 1988], to all applications for United States patents pending on or filed after such date of enactment, and to all licenses under section 184 granted before, on, or after the date of enactment of this section.

“(2) The amendments made by 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 section [Aug. 23, 1988] 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.

“(3) No United States patent granted before the date of enactment of this section [Aug. 23, 1988] shall abridge or affect the right of any person or his successors in