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TITLE 35, UNITED STATES CODE—PATENTS

See Legislative History, p. 2394

CHAPTER 950—PUBLIC LAW 593

[H. R. 7794]

An Act to revise and codify the laws relating to patents and the Patent Office, and to enact into law title 35 of the United States Code entitled "Patents".

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

Title 35 of the United States Code, entitled "Patents", is revised, codified, and enacted into law, and may be cited, "Title 35, United States Code, section—", as follows:

TITLE 35—PATENTS

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PART I—PATENT OFFICE

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CHAPTER 1—ESTABLISHMENT, OFFICERS, FUNCTIONS

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§ 1. Establishment

The Patent Office shall continue as an office in the Department of Commerce, where records, books, drawings, specifications, and other papers and things pertaining to patents and to trade-mark registrations shall be kept and preserved, except as otherwise provided by law.

§ 2. Seal

The Patent Office shall have a seal with which letters patent, certificates of trade-mark registrations, and papers issued from the Office shall be authenticated.

§ 3. Officers and employees

A Commissioner of Patents, one first assistant commissioner, two assistant commissioners, and nine examiners-in-chief, shall be appointed by the President, by and with the advice and consent of the Senate. The assistant commissioners shall perform the duties pertaining to the office of commis-

sioner assigned to them by the Commissioner. The first assistant commissioner, or, in the event of a vacancy in that office, the assistant commissioner senior in date of appointment, shall fill the office of Commissioner during a vacancy in that office until a Commissioner is appointed and takes office. The Secretary of Commerce, upon the nomination of the Commissioner in accordance with law, shall appoint all other officers and employees.

The Secretary of Commerce may vest in himself the functions of the Patent Office and its officers and employees specified in this title and may from time to time authorize their performance by any other officer or employee.

§ 4. Restrictions on officers and employees as to interest in patents

Officers and employees of the Patent Office shall be incapable, during the period of their appointments and for one year thereafter, of applying for a patent and of acquiring, directly or indirectly, except by inheritance or bequest, any patent or any right or interest in any patent, issued or to be issued by the Office. In patents applied for thereafter they shall not be entitled to any priority date earlier than one year after the termination of their appointment.

§ 5. Bond of Commissioner and other officers

The Commissioner and such other officers as he designates, before entering upon their duties, shall severally give bond, with sureties, the former in the sum of $10,000, and the latter in sums prescribed by the Commissioner, conditioned for the faithful discharge of their respective duties and that they shall render to the proper officers of the Treasury a true account of all money received by virtue of their offices.

§ 6. Duties of Commissioner

The Commissioner, under the direction of the Secretary of Commerce, shall superintend or perform all duties required by law respecting the granting and issuing of patents and the registration of trade-marks; and he shall have charge of property belonging to the Patent Office. He may, subject to the approval of the Secretary of Commerce, establish regulations, not inconsistent with law, for the conduct of proceedings in the Patent Office.

§ 7. Board of Appeals

The examiners-in-chief shall be persons of competent legal knowledge and scientific ability. The Commissioner, the assistant commissioners, and the examiners-in-chief shall constitute a Board of Appeals, which, on written appeal of the applicant, shall review adverse decisions of examiners upon applications for patents. Each appeal shall be heard by at least three members of the Board of Appeals, the members hearing such appeal to be designated by the Commissioner. The Board of Appeals has sole power to grant rehearings.

Whenever the Commissioner considers it necessary to maintain the work of the Board of Appeals current, he may designate any patent examiner of the primary examiner grade or higher, having the requisite ability, to serve as examiner-in-chief for periods not exceeding six months each. An examiner so designated shall be qualified to act as a member of the Board of Appeals. Not more than one such primary examiner shall be a member of the Board of Appeals hearing an appeal.

§ 8. Library

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

§ 9. Classification of patents

The Commissioner 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.

§ 10. Certified copies of records

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

§ 11. Publications

(a) The Commissioner may print, or cause to be printed, the following:

1. Patents, including specifications and drawings, together with copies of the same. The Patent Office may print the headings of the drawings for patents for the purpose of photolithography.
2. Certificates of trade-mark registrations, including statements and drawings, together with copies of the same.
3. The Official Gazette of the United States Patent Office.
4. Annual indexes of patents and patentees, and of trade-marks and registrants.
5. Annual volumes of decisions in patent and trade-mark cases.
6. Pamphlet copies of the patent laws and rules of practice, laws and rules relating to trade-marks, and circulars or other publications relating to the business of the Office.

(b) The Commissioner may exchange any of the publications specified in items 3, 4, 5, and 6 of subsection (a) of this section for publications desirable for the use of the Patent Office.

§ 12. Exchange of copies of patents with foreign countries

The Commissioner may exchange copies of specifications and drawings of United States patents for those of foreign countries.

§ 13. Copies of patents for public libraries

The Commissioner may supply printed copies of specifications and drawings of patents to public libraries in the United States which shall maintain such copies for the use of the public, at the rate for each year's issue established for this purpose in section 41(a) 9 of this title.

§ 14. Annual report to Congress

The Commissioner shall report to Congress annually the moneys received and expended, statistics concerning the work of the Office, and other information relating to the Office as may be useful to the Congress or the public.

CHAPTER 2—PROCEEDINGS IN THE PATENT OFFICE

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21. Day for taking action falling on Saturday, Sunday, or holiday.
22. Printing of papers filed.
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§ 21. Day for taking action falling on Saturday, Sunday, or holiday

When the day, or the last day, for taking any action or paying any fee in the United States Patent Office falls on Saturday, Sunday, or a holiday within the District of Columbia, the action may be taken, or the fee paid, on the next succeeding secular or business day.

§ 22. Printing of papers filed

The Commissioner may require papers filed in the Patent Office to be printed or typewritten.

§ 23. Testimony in Patent Office cases

The Commissioner may establish rules for taking affidavits and depositions required in cases in the Patent Office. Any officer authorized by law to take depositions to be used in the courts of the United States, or of the State where he resides, may take such affidavits and depositions.

§ 24. Subpoenas, witnesses

The clerk of any United States court for the district wherein testimony is to be taken for use in any contested case in the Patent Office, shall, upon

the application of any party thereto, issue a subpoena for any witness residing or being within such district, commanding him to appear and testify before an officer in such district authorized to take depositions and affidavits, at the time and place stated in the subpoena. The provisions of the Federal Rules of Civil Procedure relating to the attendance of witnesses and to the production of documents and things shall apply to contested cases in the Patent Office.

Every witness subpoenaed and in attendance shall be allowed the fees and traveling expenses allowed to witnesses attending the United States district courts.

A judge of a court whose clerk issued a subpoena may enforce obedience to the process or punish disobedience as in other like cases, on proof that a witness, served with such subpoena, neglected or refused to appear or to testify. No witness shall be deemed guilty of contempt for disobeying such subpoena unless his fees and traveling expenses in going to, and returning from, and one day's attendance at the place of examination, are paid or tendered him at the time of the service of the subpoena; nor for refusing to disclose any secret matter except upon appropriate order of the court which issued the subpoena.

CHAPTER 3—PRACTICE BEFORE PATENT OFFICE

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31. Regulations for agents and attorneys.
32. Suspension or exclusion from practice.
33. Unauthorized representation as practitioner.

§ 31. Regulations for agents and attorneys

The Commissioner, subject to the approval of the Secretary of Commerce, may prescribe regulations governing the recognition and conduct of agents, attorneys, or other persons representing applicants or other parties before the Patent Office, and may require them, before being recognized as representatives of applicants or other persons, to show that they are of good moral character and reputation and are possessed of the necessary qualifications to render to applicants or other persons valuable service, advice, and assistance in the presentation or prosecution of their applications or other business before the Office.

§ 32. Suspension or exclusion from practice

The Commissioner may, after notice and opportunity for a hearing, suspend or exclude, either generally or in any particular case, from further practice before the Patent Office, any person, agent, or attorney shown to be incompetent or disreputable, or guilty of gross misconduct, or who does not comply with the regulations established under section 31 of this title, or who shall, by word, circular, letter, or advertising, with intent to defraud in any manner, deceive, mislead, or threaten any applicant or prospective applicant, or other person having immediate or prospective business before the Office. The reasons for any such suspension or exclusion shall be duly recorded. The United States District Court for the District of Columbia, under such conditions and upon such proceedings as it by its rules determines, may review the action of the Commissioner upon the petition of the person so refused recognition or so suspended or excluded.

§ 33. Unauthorized representation as practitioner

Whoever, not being recognized to practice before the Patent Office, holds himself out or permits himself to be held out as so recognized, or as being qualified to prepare or prosecute applications for patent, shall be fined not more than $1,000 for each offense.

CHAPTER 4—PATENT FEES

Sec.
41. Patent fees.
42. Payment of patent fees; return of excess amounts.

§ 41. Patent fees

(a) The Commissioner shall charge the following fees:

1. On filing each application for an original patent, except in design cases, $30, and $1 for each claim in excess of twenty.

2. On issuing each original patent, except in design cases, $30, and $1 for each claim in excess of twenty.

3. In design cases: For three years and six months, $10; for seven years, $15; for fourteen years, $30.

4. On every application for the reissue of a patent, $30 and $1 for each claim in excess of twenty over and above the number of claims of the original patent.

5. On filing each disclaimer, $10.

6. On an appeal for the first time from the examiner to the Board of Appeals, $25.

7. On filing each petition for the revival of an abandoned application for a patent or for the delayed payment of the fee for issuing each patent, $10.

8. For certificate of correction of applicant's mistake under section 255 of this title, $10.

9. For uncertified printed copies of specifications and drawings of patents (except design patents), 25 cents per copy; for design patents, 10 cents per copy; special rate for libraries specified in section 13 of this title, $50 for patents issued in one year.

10. For recording every assignment, agreement, or other paper not exceeding six pages, $3; for each additional two pages or less, $1; for each additional patent or application included in one writing, where more than one is so included, 50 cents additional.

11. For each certificate, $1.

(b) The Commissioner may establish charges for copies of records, publications, or services furnished by the Patent Office, not specified above.

§ 42. Payment of patent fees; return of excess amounts

All patent fees shall be paid to the Commissioner who shall deposit the same in the Treasury of the United States in such manner as the Secretary of the Treasury directs, and the Commissioner may refund any sum paid by mistake or in excess of the fee required by law.

PART II—PATENTABILITY OF INVENTIONS AND GRANT OF PATENTS

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CHAPTER 10—PATENTABILITY OF INVENTIONS

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§ 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.

§ 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, subject to the conditions and requirements of this title.

§ 102. Conditions for patentability; novelty and loss of right to patent

A person shall be entitled to a patent unless—

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent, or

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States, or

(c) he has abandoned the invention, or

(d) the invention was first patented or caused to be patented by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application filed more than twelve months before the filing of the application in the United States, or

(e) 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

(f) he did not himself invent the subject matter sought to be patented, or

(g) 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.

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

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

§ 104. Invention made abroad

In proceedings in the Patent Office and in the courts, an applicant for a patent, or a patentee, may not establish a date of invention by reference to knowledge or use thereof, or other activity with respect thereto, in a foreign country, except as provided in section 119 of this title. Where an invention was made by a person, civil or military, while domiciled in the United States and serving in a foreign country in connection with operations by or on behalf of the United States, he shall be entitled to the same rights of priority with respect to such invention as if the same had been made in the United States.

CHAPTER 11—APPLICATION FOR PATENT

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120. Benefit of earlier filing date in the United States.
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§ 111. Application for patent

Application for patent shall be made by the inventor, except as otherwise provided in this title, in writing to the Commissioner. Such application shall include: (1) a specification as prescribed by section 112 of this title; (2) a drawing as prescribed by section 113 of this title; and (3) an oath by the applicant as prescribed by section 115 of this title. The application must be signed by the applicant and accompanied by the fee required by law.

§ 112. Specification

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

§ 113. Drawings

When the nature of the case admits, the applicant shall furnish a drawing.

§ 114. Models, specimens

The Commissioner may require the applicant to furnish a model of convenient size to exhibit advantageously the several parts of his invention.

When the invention relates to a composition of matter, the Commissioner may require the applicant to furnish specimens or ingredients for the purpose of inspection or experiment.

§ 115. Oath of applicant

The applicant shall make oath that he believes himself to be the original and first inventor of the process, machine, manufacture, or composition of matter, or improvement thereof, for which he solicits a patent; and shall state of what country he is a citizen. Such oath may be made before any person within the United States authorized by law to administer oaths, or, when made in a foreign country, before any diplomatic or consular officer of the United States authorized to administer oaths, or before any officer having an official seal and authorized to administer oaths in the foreign country in which the applicant may be, whose authority shall be proved by certificate of a diplomatic or consular officer of the United States, and such oath shall be valid if it complies with the laws of the state or country where made. When the application is made as provided in this

title by a person other than the inventor, the oath may be so varied in form that it can be made by him.

§ 116. Joint inventors

When an invention is made by two or more persons jointly, they shall apply for patent jointly and each sign the application and make the required oath, except as otherwise provided in this title.

If a joint inventor refuses to join in an application for patent or cannot be found or reached after diligent effort, the application may be made by the other inventor on behalf of himself and the omitted inventor. The Commissioner, on proof of the pertinent facts and after such notice to the omitted inventor as he prescribes, may grant a patent to the inventor making the application, subject to the same rights which the omitted inventor would have had if he had been joined. The omitted inventor may subsequently join in the application.

Whenever a person is joined in an application for patent as joint inventor through error, or a joint inventor is not included in an application through error, and such error arose without any deceptive intention on his part, the Commissioner may permit the application to be amended accordingly, under such terms as he prescribes.

§ 117. Death or incapacity of inventor

Legal representatives of deceased inventors and of those under legal incapacity may make application for patent upon compliance with the requirements and on the same terms and conditions applicable to the inventor.

§ 118. Filing by other than inventor

Whenever an inventor refuses to execute an application for patent, or cannot be found or reached after diligent effort, a person to whom the inventor has assigned or agreed in writing to assign the invention or who otherwise shows sufficient proprietary interest in the matter justifying such action, may make application for patent on behalf of and as agent for the inventor on proof of the pertinent facts and a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage; and the Commissioner may grant a patent to such inventor upon such notice to him as the Commissioner deems sufficient, and on compliance with such regulations as he prescribes.

§ 119. Benefit of earlier filing date in foreign country; right of priority

An application for patent for an invention filed in this country by any person who has, or whose legal representatives or assigns have, previously regularly filed an applicaton for a patent for the same invention in a foreign country which affords similar privileges in the case of applications filed in the United States or to citizens of the United States, shall have the same effect as the same application would have if filed in this country on the date on which the application for patent for the same invention was first filed in such foreign country, if the application in this country is filed within twelve months from the earliest date on which such foreign application was filed; but no patent shall be granted on any application for patent for an invention which had been patented or described in a printed publication in any country more than one year before the date of the actual filing of the application in this country, or which had been in public use or on sale in this country more than one year prior to such filing.

No application for patent shall be entitled to this right of priority unless a claim therefor and a certified copy of the original foreign application, specification and drawings upon which it is based are filed in the Patent Office before the patent is granted, or at such time during the pendency of the application as required by the Commissioner not earlier than six months after the filing of the application in this country. Such certification shall be made by the patent office of the foreign country in which filed and show the date of the application and of the filing of the specification and other papers. The Commissioner may require a translation of the

papers filed if not in the English language and such other information as he deems necessary.

§ 120. Benefit of earlier filing date in the United States

An application for patent for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in an application previously filed in the United States by the same inventor shall have the same effect, as to such invention, as though filed on the date of the prior application, if filed before the patenting or abandonment of or termination of proceedings on the first application or on an application similarly entitled to the benefit of the filing date of the first application and if it contains or is amended to contain a specific reference to the earlier filed application.

§ 121. Divisional applications

If two or more independent and distinct inventions are claimed in one application, the Commissioner may require the application to be restricted to one of the inventions. If the other invention is made the subject of a divisional application which complies with the requirements of section 120 of this title it shall be entitled to the benefit of the filing date of the original application. A patent issuing on an application with respect to which a requirement for restriction under this section has been made, or on an application filed as a result of such a requirement, shall not be used as a reference either in the Patent Office or in the courts against a divisional application or against the original application or any patent issued on either of them, if the divisional application is filed before the issuance of the patent on the other application. If a divisional application is directed solely to subject matter described and claimed in the original application as filed, the Commissioner may dispense with signing and execution by the inventor. The validity of a patent shall not be questioned for failure of the Commissioner to require the application to be restricted to one invention.

§ 122. Confidential status of applications

Applications for patents shall be kept in confidence by the Patent Office and no information concerning the same given without authority of the applicant or owner unless necessary to carry out the provisions of any Act of Congress or in such special circumstances as may be determined by the Commissioner.

CHAPTER 12—EXAMINATION OF APPLICATION

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131. Examination of application.
132. Notice of rejection; reexamination.
133. Time for prosecuting application.
134. Appeal to the Board of Appeals.
135. Interferences.

§ 131. Examination of application

The Commissioner shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Commissioner shall issue a patent therefor.

§ 132. Notice of rejection; reexamination

Whenever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Commissioner shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application; and if after receiving such notice, the applicant persists in his claim for a patent, with or without amendment, the application shall be reexamined. No amendment shall introduce new matter into the disclosure of the invention.

§ 133. Time for prosecuting application

Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

§ 134. Appeal to the Board of Appeals

An applicant for a patent, any of whose claims has been twice rejected, may appeal from the decision of the primary examiner to the Board of Appeals, having once paid the fee for such appeal.

§ 135. Interferences

Whenever an application is made for a patent which, in the opinion of the Commissioner, would interfere with any pending application, or with any unexpired patent, he shall give notice thereof to the applicants, or applicant and patentee, as the case may be. The question of priority of invention shall be determined by a board of patent interferences (consisting of three examiners of interferences) whose decision, if adverse to the claim of an applicant, shall constitute the final refusal by the Patent Office of the claims involved, and the Commissioner may issue a patent to the applicant who is adjudged the prior inventor. A final judgment adverse to a patentee from which no appeal or other review has been or can be taken or had shall constitute cancellation of the claims involved from the patent, and notice thereof shall be endorsed on copies of the patent thereafter distributed by the Patent Office.

A claim which is the same as, or for the same or substantially the same subject matter as, a claim of an issued patent may not be made in any application unless such a claim is made prior to one year from the date on which the patent was granted.

CHAPTER 13—REVIEW OF PATENT OFFICE DECISION

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§ 141. Appeal to Court of Customs and Patent Appeals

An applicant dissatisfied with the decision of the Board of Appeals may appeal to the United States Court of Customs and Patent Appeals, thereby waiving his right to proceed under section 145 of this title. A party to an interference dissatisfied with the decision of the board of patent interferences on the question of priority may appeal to the United States Court of Customs and Patent Appeals, but such appeal shall be dismissed if any adverse party to such interference, within twenty days after the appellant has filed notice of appeal according to section 142 of this title, files notice with the Commissioner that he elects to have all further proceedings conducted as provided in section 146 of this title. Thereupon the appellant shall have thirty days thereafter within which to file a civil action under section 146, in default of which the decision appealed from shall govern the further proceedings in the case.

§ 142. Notice of appeal

When an appeal is taken to the United States Court of Customs and Patent Appeals, the appellant shall give notice thereof to the Commissioner, and shall file in the Patent Office his reasons of appeal, specifically set forth in writing, within such time after the date of the decision appealed from, not less than sixty days, as the Commissioner appoints.

§ 143. Proceedings on appeal

The United States Court of Customs and Patent Appeals shall, before hearing such appeal, give notice of the time and place of the hearing to the Commissioner and the parties thereto. The Commissioner shall transmit to the court certified copies of all the necessary original papers and evidence in the case specified by the appellant and any additional papers and evidence specified by the appellee and in an ex parte case the Commissioner shall furnish the court with the grounds of the decision of the Patent Office, in writing, touching all the points involved by the reasons of appeal.

§ 144. Decision on appeal

The United States Court of Customs and Patent Appeals, on petition, shall hear and determine such appeal on the evidence produced before the Patent Office, and the decision shall be confined to the points set forth in the reasons of appeal. Upon its determination the court shall return to the Commissioner a certificate of its proceedings and decision, which shall be entered of record in the Patent Office and govern the further proceedings in the case.

§ 145. Civil action to obtain patent

An applicant dissatisfied with the decision of the Board of Appeals may unless appeal has been taken to the United States Court of Customs and Patent Appeals, have remedy by civil action against the Commissioner in the United States District Court for the District of Columbia if commenced within such time after such decision, not less than sixty days, as the Commissioner appoints. The court may adjudge that such applicant is entitled to receive a patent for his invention, as specified in any of his claims involved in the decision of the Board of Appeals, as the facts in the case may appear and such adjudication shall authorize the Commissioner to issue such patent on compliance with the requirements of law. All the expenses of the proceedings shall be paid by the applicant.

§ 146. Civil action in case of interference

Any party to an interference dissatisfied with the decision of the board of patent interferences on the question of priority, may have remedy by civil action, if commenced within such time after such decision, not less than sixty days, as the Commissioner appoints or as provided in section 141 of this title, unless he has appealed to the United States Court of Customs and Patent Appeals, and such appeal is pending or has been decided. In such suits the record in the Patent Office shall be admitted on motion of either party upon the terms and conditions as to costs, expenses, and the further cross-examination of the witnesses as the court imposes, without prejudice to the right of the parties to take further testimony. The testimony and exhibits of the record in the Patent Office when admitted shall have the same effect as if originally taken and produced in the suit.

Such suit may be instituted against the party in interest as shown by the records of the Patent Office at the time of the decision complained of, but any party in interest may become a party to the acton. If there be adverse parties residing in a plurality of districts not embraced within the same state, or an adverse party residing in a foreign country, the United States District Court for the District of Columbia shall have jurisdiction and may issue summons against the adverse parties directed to the marshal of any district in which any adverse party resides. Summons against adverse parties residing in foreign countries may be served by publication or otherwise as the court directs. The Commissioner shall not be a necessary party but he shall be notified of the filing of the suit by the clerk of the court in which it is filed and shall have the right to intervene. Judgment of the court in favor of the right of an applicant to a patent shall authorize the Commissioner to issue such patent on the filing in the Patent Office of a certified copy of the judgment and on compliance with the requirements of law.

CHAPTER 14—ISSUE OF PATENT

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153. How issued.
154. Contents and term of patent.

§ 151. Time of issue of patent

The patent shall issue within three months from the date of the payment of the final fee, which shall be paid not later than six months after written notice to the applicant of allowance of the application, but the Commissioner may accept the final fee if paid within one year after the six month period for payment, and the patent shall issue.

§ 152. Issue of patent to assignee

Patents may be granted to the assignee of the inventor of record in the Patent Office, upon the application made and the specification sworn to by the inventor, except as otherwise provided in this title.

§ 153. How issued

Patents shall be issued in the name of the United States of America, under the seal of the Patent Office, and shall be signed by the Commissioner or have his signature placed thereon and attested by an officer of the Patent Office designated by the Commissioner, and shall be recoorded in the Patent Office.

§ 154. Contents and term of patent

Every patent shall contain a short title of the invention and a grant to the patentee, his heirs or assigns, for the term of seventeen years, of the right to exclude others from making, using, or selling the invention throughout the United States, referring to the specification for the particulars thereof. A copy of the specification and drawings shall be annexed to the patent and be a part thereof.

CHAPTER 15—PLANT PATENTS

Sec.
161. Patents for plants.
162. Description, claim.
163. Grant.
164. Assistance of Department of Agriculture.

§ 161. Patents for plants

Whoever invents or discovers and asexually reproduces any distinct and new variety of plant, other than a tuberpropagated plant, may obtain a patent therefor, subject to the conditions and requirements of this title.

The provisions of this title relating to patents for inventions shall apply to patents for plants, except as otherwise provided.

§ 162. Description, claim

No plant patent shall be declared invalid for noncompliance with section 112 of this title if the description is as complete as is reasonably possible.

The claim in the specification shall be in formal terms to the plant shown and described.

§ 163. Grant

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.

§ 164. Assistance of Department of Agriculture

The President may by Executive order direct the Secretary of Agriculture, in accordance with the requests of the Commissioner, 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 Commissioner officers and employees of the Department.

CHAPTER 16—DESIGNS

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

§ 171. Patents for designs

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.

The provisions of this title relating to patents for inventions shall apply to patents for designs, except as otherwise provided.

§ 172. Right of priority

The right of priority provided for by section 119 of this title and the time specified in section 102(d) shall be six months in the case of designs.

§ 173. Term of design patent

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.

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 of 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.

§ 181. Secrecy of certain inventions and withholding of patent

Whenever publication or disclosure 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 upon being so notified shall order that the invention be kept secret and shall withhold the grant of a patent therefor under the conditions set forth hereinafter.

Whenever the publication or disclosure of an invention by the granting of a patent, in which the Government does not have a property interest, might, in the opinion of the Commissioner, 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 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 and the Commissioner shall order that the invention be kept secret and shall withhold 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 shall thereupon maintain 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 grant of a patent withheld for a period of more than one year. The Commissioner 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 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.

§ 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 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. The abandonment shall be held to have occurred as of the time of violation. The consent of the Commissioner 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.

§ 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 Court of 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 Court of 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.[48] 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.

§ 184. Filing of application in foreign country

Except when authorized by a license obtained from the Commissioner 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 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 inadvertently filed abroad 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.

§ 185. Patent barred for filing without license

Notwithstanding any other provisions of law any person, and his successors, assigns, or legal representatives, shall not receive a United States patent for an invention if that person, or his successors, assigns, or legal representatives shall, without procuring the license prescribed in section 184 of this title, have made, or consented to or assisted another's making, application in a foreign country for a patent or for the registration of a utility model, industrial design, or model in respect of the invention. A United States patent issued to such person, his successors, assigns, or legal representatives shall be invalid.

§ 186. Penalty

Whoever, during the period or periods of time an invention has been ordered to be kept secret and the grant of a patent thereon withheld pursuant to section 181 of this title, shall, with knowledge of such order and without due authorization, willfully publish or disclose or authorize or cause to be published or disclosed the invention, or material information with respect thereto, or whoever, in violation of the provisions of section 184 of this title, shall file or cause or authorize to be filed in any foreign country an application for patent or for the registration of a utility model, industrial design, or model in respect of any invention made in the United States, shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than two years, or both.

48. 28 U.S.C.A. § 1498.

§ 187. Nonapplicability to certain persons

The prohibitions and penalties of this chapter shall not apply to any officer or agent of the United States acting within the scope of his authority, nor to any person acting upon his written instructions or permission.

§ 188. Rules and regulations, delegation of power

The Atomic Energy Commission, the Secretary of a defense department, the chief officer of any other department or agency of the Government designated by the President as a defense agency of the United States, and the Secretary of Commerce, may separately issue rules and regulations to enable the respective department or agency to carry out the provisions of this chapter, and may delegate any power conferred by this chapter.

PART III—PATENTS AND PROTECTION OF PATENT RIGHTS

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CHAPTER 25—AMENDMENT AND CORRECTION OF PATENTS

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251. Reissue of defective patents.
252. Effect of reissue.
253. Disclaimer.
254. Certificate of correction of Patent Office mistake.
255. Certificate of correction of applicant's mistake.
256. Misjoinder of inventor.

§ 251. Reissue of defective patents

Whenever any patent is, through error without any deceptive intention, deemed wholly or partly inoperative or invalid, by reason of a defective specification or drawing, or by reason of the patentee claiming more or less than he had a right to claim in the patent, the Commissioner shall, on the surrender of such patent and the payment of the fee required by law, reissue the patent for the invention disclosed in the original patent, and in accordance with a new and amended application, for the unexpired part of the term of the original patent. No new matter shall be introduced into the application for reissue.

The Commissioner may issue several reissued patents for distinct and separate parts of the thing patented, upon demand of the applicant, and upon payment of the required fee for a reissue for each of such reissued patents.

The provisions of this title relating to applications for patent shall be applicable to applications for reissue of a patent, except that application for reissue may be made and sworn to by the assignee of the entire interest if the application does not seek to enlarge the scope of the claims of the original patent.

No reissued patent shall be granted enlarging the scope of the claims of the original patent unless applied for within two years from the grant of the original patent.

§ 252. Effect of reissue

The surrender of the original patent shall take effect upon the issue of the reissued patent, and every reissued patent shall have the same effect and operation in law, on the trial of actions for causes thereafter arising, as if the same had been originally granted in such amended form, but in so far as the claims of the original and reissued patents are iden-

tical, such surrender shall not affect any action then pending nor abate any cause of action then existing, and the reissued patent, to the extent that its claims are identical with the original patent, shall constitute a continuation thereof and have effect continuously from the date of the original patent.

No reissued patent shall abridge or affect the right of any person or his successors in business who made, purchased or used prior to the grant of a reissue anything patented by the reissued patent, to continue the use of, or to sell to others to be used or sold, the specific thing so made, purchased or used, unless the making, using or selling of such thing infringes a valid claim of the reissued patent which was in the original patent. 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 grant of the reissue, and it may also provide for the continued practice of any process patented by the reissue, practiced, or for the practice of which substantial preparation was made, prior to the grant of the reissue, to the extent and under such terms as the court deems equitable for the protection of investments made or business commenced before the grant of the reissue.

§ 253. Disclaimer

Whenever, without any deceptive intention, a claim of a patent is invalid the remaining claims shall not thereby be rendered invalid. A patentee, whether of the whole or any sectional interest therein, may, on payment of the fee required by law, make disclaimer of any complete claim, stating therein the extent of his interest in such patent. Such disclaimer shall be in writing, and recorded in the Patent Office; and it shall thereafter be considered as part of the original patent to the extent of the interest possessed by the disclaimant and by those claiming under him.

In like manner any patentee or applicant may disclaim or dedicate to the public the entire term, or any terminal part of the term, of the patent granted or to be granted.

§ 254. Certificate of correction of Patent Office mistake

Whenever a mistake in a patent, incurred through the fault of the Patent Office, is clearly disclosed by the records of the Office, the Commissioner may issue a certificate of correction stating the fact and nature of such mistake, under seal, without charge, to be recorded in the records of patents. A printed copy thereof shall be attached to each printed copy of the patent, and such certificate shall be considered as part of the original patent. Every such patent, together with such certificate, shall have the same effect and operation in law on the trial of actions for causes thereafter arising as if the same had been originally issued in such corrected form. The Commissioner may issue a corrected patent without charge in lieu of and with like effect as a certificate of correction.

§ 255. Certificate of correction of applicant's mistake

Whenever a mistake of a clerical or typographical nature, or of minor character, which was not the fault of the Patent Office, appears in a patent and a showing has been made that such mistake occurred in good faith, the Commissioner may, upon payment of the required fee, issue a certificate of correction, if the correction does not involve such changes in the patent as would constitute new matter or would require re-examination. Such patent, together with the certificate, shall have the same effect and operation in law on the trial of actions for causes thereafter arising as if the same had been originally issued in such corrected form.

§ 256. Misjoinder of inventor

Whenever a patent is issued on the application of persons as joint inventors and it appears that one of such persons was not in fact a

joint inventor, and that he was included as a joint inventor by error and without any deceptive intention, the Commissioner may, on application of all the parties and assignees, with proof of the facts and such other requirements as may be imposed, issue a certificate deleting the name of the erroneously joined person from the patent.

Whenever a patent is issued and it appears that a person was a joint inventor, but was omitted by error and without deceptive intention on his part, the Commissioner may, on application of all the parties and assignees, with proof of the facts and such other requirements as may be imposed, issue a certificate adding his name to the patent as a joint inventor.

The misjoinder or nonjoinder of joint inventors shall not invalidate a patent, if such error can be corrected as provided in this section. The court before which such matter is called in question may order correction of the patent on notice and hearing of all parties concerned and the Commissioner shall issue a certificate accordingly.

CHAPTER 26—OWNERSHIP AND ASSIGNMENT

Sec.
261. Ownership; assignment.
262. Joint owners.

§ 261. Ownership; assignment

Subject to the provisions of this title, patents shall have the attributes of personal property.

Applications for patent, patents, or any interest therein, shall be assignable in law by an instrument in writing. The applicant, patentee, or his assigns or legal representatives may in like manner grant and convey an exclusive right under his application for patent, or patents, to the whole or any specified part of the United States.

A certificate of acknowledgment under the hand and official seal of a person authorized to administer oaths within the United States, or, in a foreign country, of a diplomatic or consular officer of the United States or an officer authorized to administer oaths whose authority is proved by a certificate of a diplomatic or consular officer of the United States, shall be prima facie evidence of the execution of an assignment, grant or conveyance of a patent or application for patent.

An assignment, grant or conveyance shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, unless it is recorded in the Patent Office within three months from its date or prior to the date of such subsequent purchase or mortgage.

§ 262. Joint owners

In the absence of any agreement to the contrary, each of the joint owners of a patent may make, use or sell the patented invention without the consent of and without accounting to the other owners.

CHAPTER 27—GOVERNMENT INTERESTS IN PATENTS

Sec.
266. Issue of patents without fees to Government employees.
267. Time for taking action in Government applications.

§ 266. Issue of patents without fees to Government employees

The Commissioner may grant, subject to the provisions of this title, to any officer, enlisted man, or employee of the Government, except officers and employees of the Patent Office, a patent without the payment of fees, when the head of a department or agency certifies the invention is used or likely to be used in the public interest and the applicant in his application states that the invention described therein, if patented, may be manufactured and used by or for the Government for governmental purposes without the payment to him of any royalty thereon, which stipulation shall be included in the patent.

§ 267. Time for taking action in Government applications

Notwithstanding the provisions of sections 133 and 151 of this title, the Commissioner may extend the time for taking any action to three years, when an application has become the property of the United States and the head of the appropriate department or agency of the Government has certified to the Commissioner that the invention disclosed therein is important to the armament or defense of the United States.

CHAPTER 28—INFRINGEMENT OF PATENTS

Sec.
271. Infringement of patent.
272. Temporary presence in the United States.

§ 271. Infringement of patent

(a) Except as otherwise provided in this title, whoever without authority makes, uses or sells any patented invention, within the United States during the term of the patent therefor, infringes the patent.

(b) Whoever actively induces infringement of a patent shall be liable as an infringer.

(c) Whoever sells a component of a patented machine, manufacture, combination or composition, or a material or apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial noninfringing use, shall be liable as a contributory infringer.

(d) No patent owner otherwise entitled to relief for infringement or contributory infringement of a patent shall be denied relief or deemed guilty of misuse or illegal extension of the patent right by reason of his having done one or more of the following: (1) derived revenue from acts which if performed by another without his consent would constitute contributory infringement of the patent; (2) licensed or authorized another to perform acts which if performed without his consent would constitute contributory infringement of the patent; (3) sought to enforce his patent rights against infringement or contributory infringement.

§ 272. Temporary presence in the United States

The use of any invention in any vessel, aircraft or vehicle of any country which affords similar privileges to vessels, aircraft or vehicles of the United States, entering the United States temporarily or accidentally, shall not constitute infringement of any patent, if the invention is used exclusively for the needs of the vessel, aircraft or vehicle and is not sold in or used for the manufacture of anything to be sold in or exported from the United States.

CHAPTER 29—REMEDIES FOR INFRINGEMENT OF PATENT, AND OTHER ACTIONS

Sec.
281. Remedy for infringement of patent.
282. Presumption of validity; defenses.
283. Injunction.
284. Damages.
285. Attorney fees.
286. Time limitation on damages.
287. Limitation on damages; marking and notice.
288. Action for infringement of a patent containing an invalid claim.
289. Additional remedy for infringement of design patent.
290. Notice of patent suits.
291. Interfering patents.
292. False marking.
293. Nonresident patentee, service and notice.

§ 281. Remedy for infringement of patent

A patentee shall have remedy by civil action for infringement of his patent.

§ 282. Presumption of validity; defenses

A patent shall be presumed valid. The burden of establishing invalidity of a patent shall rest on a party asserting it.

The following shall be defenses in any action involving the validity or infringement of a patent and shall be pleaded:

(1) Noninfringement, absence of liability for infringement or unenforceability,

(2) Invalidity of the patent or any claim in suit on any ground specified in part II of this title as a condition for patentability,

(3) Invalidity of the patent or any claim in suit for failure to comply with any requirement of sections 112 or 251 of this title,

(4) Any other fact or act made a defense by this title.

In actions involving the validity or infringement of a patent the party asserting invalidity or noninfringement shall give notice in the pleadings or otherwise in writing to the adverse party at least thirty days before the trial, of the country, number, date, and name of the patentee of any patent, the title, date, and page numbers of any publication to be relied upon as anticipation of the patent in suit or, except in actions in the United States Court of Claims, as showing the state of the art, and the name and address of any person who may be relied upon as the prior inventor or as having prior knowledge of or as having previously used or offered for sale the invention of the patent in suit. In the absence of such notice proof of the said matters may not be made at the trial except on such terms as the court requires.

§ 283. Injunction

The several courts having jurisdiction of cases under this title may grant injunctions in accordance with the principles of equity to prevent the violation of any right secured by patent, on such terms as the court deems reasonable.

§ 284. Damages

Upon finding for the claimant the court shall award the claimant damages adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use made of the invention by the infringer, together with interest and costs as fixed by the court.

When the damages are not found by a jury, the court shall assess them. In either event the court may increase the damages up to three times the amount found or assessed.

The court may receive expert testimony as an aid to the determination of damages or of what royalty would be reasonable under the circumstances.

§ 285. Attorney fees

The court in exceptional cases may award reasonable attorney fees to the prevailing party.

§ 286. Time limitation on damages

Except as otherwise provided by law, no recovery shall be had for any infringement committed more than six years prior to the filing of the complaint or counterclaim for infringement in the action.

In the case of claims against the United States Government for use of a patented invention, the period before bringing suit, up to six years, between the date of receipt of a written claim for compensation by the department or agency of the Government having authority to settle such claim, and the date of mailing by the Government of a notice to the claimant that his claim has been denied shall not be counted as part of the period referred to in the preceding paragraph.

§ 287. Limitation on damages; marking and notice

Patentees, and persons making or selling any patented article for or under them, may give notice to the public that the same is patented, either by fixing thereon the word "patent" or the abbreviation "pat.",

together with the number of the patent, or when, from the character of the article, this can not be done, by fixing to it, or to the package wherein one or more of them is contained, a label containing a like notice. In the event of failure so to mark, no damages shall be recovered by the patentee in any action for infringement, except on proof that the infringer was notified of the infringement and continued to infringe thereafter, in which event damages may be recovered only for infringement occurring after such notice. Filing of an action for infringement shall constitute such notice.

§ 288. Action for infringement of a patent containing an invalid claim

Whenever, without deceptive intention, a claim of a patent is invalid, an action may be maintained for the infringement of a claim of the patent which may be valid. The patentee shall recover no costs unless a disclaimer of the invalid claim has been entered at the Patent Office before the commencement of the suit.

§ 289. Additional remedy for infringement of design patent

Whoever during the term of a patent for a design, without license of the owner, (1) applies the patented design, or any colorable imitation thereof, to any article of manufacture for the purpose of sale, or (2) sells or exposes for sale any article of manufacture to which such design or colorable imitation has been applied shall be liable to the owner to the extent of his total profit, but not less than $250, recoverable in any United States district court having jurisdiction of the parties.

Nothing in this section shall prevent, lessen, or impeach any other remedy which an owner of an infringed patent has under the provisions of this title, but he shall not twice recover the profit made from the infringement.

§ 290. Notice of patent suits

The clerks of the courts of the United States, within one month after the filing of an action under this title shall give notice thereof in writing to the Commissioner, setting forth so far as known the names and addresses of the parties, name of the inventor, and the designating number of the patent upon which the action has been brought. If any other patent is subsequently included in the action he shall give like notice thereof. Within one month after the decision is rendered or a judgment issued the clerk of the court shall give notice thereof to the Commissioner. The Commissioner shall, on receipt of such notices, enter the same in the file of such patent.

§ 291. Interfering patents

The owner of an interfering patent may have relief against the owner of another by civil action, and the court may adjudge the question of the validity of any of the interfering patents, in whole or in part. The provisions of the second paragraph of section 146 of this title shall apply to actions brought under this section.

§ 292. False marking

(a) Whoever, without the consent of the patentee, marks upon, or affixes to, or uses in advertising in connection with anything made, used, or sold by him, the name or any imitation of the name of the patentee, the patent number, or the words "patent," "patentee," or the like, with the intent of counterfeiting or imitating the mark of the patentee, or of deceiving the public and inducing them to believe that the thing was made or sold by or with the consent of the patentee; or

Whoever marks upon, or affixes to, or uses in advertising in connection with any unpatented article, the word "patent" or any word or number importing that the same is patented, for the purpose of deceiving the public; or

Whoever marks upon, or affixes to, or uses in advertising in connection with any article, the words "patent applied for," "patent pending," or any word importing that an application for patent has been made, when

no application for patent has been made, or if made, is not pending, for the purpose of deceiving the public—

Shall be fined not more than $500 for every such offense.

(b) Any person may sue for the penalty, in which event one-half shall go to the person suing and the other to the use of the United States.

§ 293. Nonresident patentee; service and notice

Every patentee not residing in the United States may file in the Patent Office a written designation stating the name and address of a person residing within the United States on whom may be served process or notice of proceedings affecting the patent or rights thereunder. If the person designated cannot be found at the address given in the last designation, or if no person has been designated, the United States District Court for the District of Columbia shall have jurisdiction and summons shall be served by publication or otherwise as the court directs. The court shall have the same jurisdiction to take any action respecting the patent or rights thereunder that it would have if the patentee were personally within the jurisdiction of the court.

Sec. 2. Section 21 of the Act approved July 5, 1946, 60 Stat. 435, (United States Code, title 15, sec. 1071, 1946 ed.) [49] is amended by striking out "Revised Statutes 4911" and inserting "35 United States Code, section 141"; by striking out "section 4915, Revised Statutes" and inserting "35 United States Code, sections 145 and 146"; and by striking out "Revised Statutes 4915" appearing twice in said section and inserting "35 United States Code, section 146".

Sec. 3. If any provision of Title 35, as enacted by section 1 hereof, is declared unconstitutional or is held invalid, the validity of the remainder of this title shall not be affected.

Sec. 4. (a) This Act shall take effect on January 1, 1953 and shall apply to all applications for patent filed on or after such date and to all patents granted on such applications. It shall apply to further proceedings on applications pending on such date and to patents granted on such applications except as otherwise provided. It shall apply to unexpired patents granted prior to such date except as otherwise provided.

(b) Section 102(d) of Title 35, as enacted by section 1 hereof, shall not apply to existing patents and pending applications, but the law previously in effect, namely the first paragraph of R.S. 4887 (U.S.Code, title 35, sec. 32, first paragraph, 1946 ed.), shall apply to such patents and applications.

(c) Section 119, second paragraph, of Title 35 as enacted by section 1 hereof shall not apply to existing patents.

(d) The period of one year specified in section 102(b) of Title 35 as enacted by section 1 hereof shall not apply in the case of applications filed before August 5, 1940, and patents granted on such applications, and with respect to such applications and patents, said period is two years instead of one year.

(e) Nothing contained in Title 35, as enacted by section 1 hereof, shall operate to nullify any judicial finding prior to the effective date of this Act on the validity of any patent by a court of competent jurisdiction.

(f) Nothing in Title 35, as enacted by section 1 hereof, shall affect any provision of the Atomic Energy Act of 1946 (Aug. 1, 1946, ch. 724, 60 Stat. 755).[50]

(g) The period of one year specified in section 4 of Title 35 as enacted by section 1 hereof shall not apply in the case of applications filed before the effective date of this Act.

(h) The repeal of sections 1–9, 11, 12 of the Act of Congress approved February 1, 1952 (ch. 4, 66 Stat. 3),[51] shall not affect any rights or liabilities existing on the date of approval of this Act. An order of secrecy issued under or in effect under the repealed Act and in effect on the date of approval of this Act, shall be considered as issued under this Act, and

49. 15 U.S.C.A. § 1071.
50. 42 U.S.C.A. § 1801 et seq.
51. 35 U.S.C.A. §§ 151–159.

any claims arising under the repealed Act or subject to presentation and determination pursuant thereto and unsettled as of the effective date of this Act, may be presented and determined pursuant to the provisions of this Act.

Sec. 5. The sections or parts thereof of the Revised Statutes or Statutes at Large enumerated in the following schedule are hereby repealed. Any rights or liabilities now existing under such sections or parts thereof shall not be affected by this repeal.

Revised Statutes	U. S. Code, 1946 edition	
	Title	Section
Section:		
475	35	1
476	35	2
478	35	3
479	35	5
480	35	4
481	35	6
482	35	7
483	35	6
486	35	10
487	35	11
488	35	12
489	35	13
493	35	78
494	35	20
496	35	19
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4884	35	40
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4889	35	34
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4894	35	37
4895	35	44
4896	35	46
4898	35	47
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Date	Chapter	Section	Volume	Page	Title	Section
1883—Mar. 3	143	Part [1]	22	625	35	45.
1887—Feb. 4	105	1	24	387	35	74.
		2	24	388	35	75.
1888—Feb. 18	15		25	40	35	39.
1891—Mar. 3	541	1 part [2]	26	939	35	14.
1896—May 19	204		29	124	35	78.
1897—Mar. 3	391	1	29	692	35	31.
		2		692	35	69.
		3		693	35	32.
		4		693	35	37.
		5		693	35	47.
		6		694	35	70.
		7		694	35	43.
1898—June 10	423	1	30	440	35	6 note.
1899—Feb. 28	227		30	915	35	46.
1902—Apr. 11	417		32	95	35	39.
May 9	783		32	193	35	73.
1903—Mar. 3	1019	1	32	1225	35	32.
		2		1226	35	35.
		3		1226	35	46.
1908—May 23	188		35	245	35	46.
May 23	189		35	246	35	41.
May 27	200	1 part [3]	35	343	35	78.
1915—Jan. 14	Pub. Res. 61.		38	1221	35	15.
Mar. 3	94	1	38	958	35	33.
		2		959	35	34.
1916—Feb. 15	22	1	39	8	35	2.
1916—July 6	225	1 part [4]	39	348	35	37.
1919—Nov. 4	93	1 part [5]	41	335	35	78.
1920—Mar. 6	94	1 part [6]	41	512	35	79.
1921—Mar. 3	126	1	41	1313	35	80.
		2		1314	35	81.
		3		1314	35	82.
		4		1314	35	83.
		5		1314	35	84.
		6		1314	35	85.
		7		1314	35	86.
		8		1315	35	87.
1922—Feb. 18	58					
		3	42	390	35	11.
		5		391	35	39.
		6		391	35	47.
		7		391	35	54.
		8		392	35	70.
		9		393	35	78.
1925—Mar. 4	535	1	43	1268	35	88.
1927—Feb. 7	67		44	1058	35	49.
Feb. 14	139	1	44	1098	35	2.
		2		1099	35	78.
Mar. 2	273	1	44	1335	35	37.
		3		1335	35	7.
		4		1336	35	52.

[1] The part relating to the granting of patents to Government employees without fees.
[2] The part relating to certified copies of drawings and specifications.
[3] The part relating to fees for recording assignments.
[4] The part amending R. S. 4894.
[5] The part relating to the price of copies of patents.
[6] The part relating to payment of fees.

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Date	Chapter	Section	Volume	Page	Title	Section
Mar. 2.....	273	5		1336	35	57.
		8		1336	35	59a.
		9		1336	35	60.
		10		1336	35	61.
		11		1336	35	63.
		12		1337	35	66.
		13		1337	35	78.
		14		1337	35	21.
1927—Mar. 3.....	364		44	1394	35	72a.
1928—Apr. 30.....	460		45	467	35	45.
May 24.....	730		45	732	35	64.
May 31.....	992	1	45	1012	35	40a.
		2		1013	35	40b.
		3		1013	35	40c.
		4		1014	35	40d.
1929—Mar. 2.....	488	2b	45	1476	35	59a, 60, 63
1930—Apr. 11.....	132	1	46	155	35	2.
		2		155	35	7.
		3		155	35	78.
		5		156	35	22.
May 23.....	312	1	46	376	35	31, 40.
		2		376	35	33.
		3		376	35	35.
		4		376	35	56a.
		5		376	35	32a.
		6		376	35	32b.
1932—June 30.....	314	308	47	410	35	78.
		309		410	35	78.
1936—June 19.....	594		49	1529	35	32.
1938—May 9.....	188		52	342	35	11a.
1939—Aug. 5.....	450	1	53	1212	35	31, 32, 69, 73.
		2		1212	35	31 note.
Aug. 5.....	451	1	53	1212	35	52.
		2		1212	35	57.
		3		1212	35	59a.
		4		1212	35	63.
Aug. 5.....	452	1	53	1213	35	51.
Aug. 7.....	568		53	1264	35	37.
Aug. 9.....	619	2	53	1293	35	41.
		3		1293	35	78.
1941—Aug. 18.....	370		55	634	35	47.
1946—July 5.....	541	301 part [1]	60	471	35	78.
Aug. 1.....	726		60	778	35	70.
Aug. 8.....	910	9	60	943	35	109.
1950—Mar. 4.....	50		64	11	35	7.
June 15.....	249		64	215	35	78.
1951—Oct. 31.....	655	53a	65	728	35	72a.
1952—Feb. 1.....	4	1	66	3	35	151.
		2		4	35	152.
		3		4	35	153.
		4		5	35	154.
		5		5	35	155.
		6		5	35	156.
		7		6	35	157.
		8		6	35	158.
		9		6	.....	
		11		6	35	159.
		12		6	.....	

[1] The part relating to the fee for copies of specifications and drawings of patents.

Approved July 19, 1952.

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Volume 2

Legislative History

Special Commentaries

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The Senate amendment also contains changes in the formulas for computing the Federal share of public assistance for Puerto Rico and the Virgin Islands. The effect of the action agreed upon in conference is to retain, for Puerto Rico and the Virgin Islands, the formulas contained in existing law.

Amendment No. 20: Under existing law the total amount certified by the Administrator under titles I, IV, X, and XIV for payment to Puerto Rico with respect to any fiscal year may not exceed $4,250,000. The Senate amendment increases this maximum amount to $5,000,000. The Senate recedes.

Amendment No. 21: This amendment contains a temporary provision relating to the amount of State and local funds which must be expended in order for a State to be eligible for the full amount of the increase in Federal funds for public assistance provided by the bill. The Senate recedes.

Amendment No. 22: This amendment provides that for the 1-year period beginning October 1, 1952, a State may exclude from consideration any income and resources not over $50 a month obtained by a recipient of old-age assistance for performing agricultural or nursing services. The Senate recedes.

Amendment to the title: The Senate recedes.

R. L. DOUGHTON,
JOHN D. DINGELL,
W. D. MILLS,
DANIEL A. REED,
THOMAS JENKINS,
Managers on the Part of the House.

TITLE 35, UNITED STATES CODE—PATENTS

For text of Act see p. 753

Senate Report No. 1979, June 27, 1952 [To accompany H.R. 7794]

House Report No. 1923, May 12, 1952 [To accompany H.R. 7794]

The Senate Report repeats in substance the House Report.

Senate Report No. 1979

THE Committee on the Judiciary, to which was referred the bill (H.R. 7794) to revise, codify, and enact into law title 35 of the United States Code entitled "Patents," having considered the same, reports favorably thereon, with amendments, and recommends that the bill, as amended, do pass.

PURPOSE

The purpose of the proposed legislation is to revise and codify the laws relating to patents and enact into law title 35 of the United States Code entitled "Patents".

LEGISLATIVE HISTORY

TABLE 3.—LAWS OMITTED AND REPEALED

Revised Statutes or Statutes at Large	Reason for omission and repeal
R. S. 496 (35 U. S. C., 1946 ed. § 19).....	Superseded, the function of disbursement was transferred to Treasury in 1933 by Executive Order 6166, see notes under 35 U. S. C., 1946 ed., § 19.
R. S. 4899 (35 U. S. C., 1946 ed. § 48).....	Redundant and unnecessary.
Mar. 3, 1897, ch. 391, § 7, 29 Stat. 694 (35 U. S. C., 1946 ed. § 43).	Has no apparent meaning.
Mar. 3, 1921, ch. 126, §§ 1–8, 41 Stat. 1313, 1314 (35 U. S. C., 1946 ed. §§ 80–87).	Obsolete.
May 31, 1928, ch. 992, §§ 1–4, 45 Stat. 1012–1014 (35 U. S. C., 1946 ed. §§ 40a–40d).	Executed and obsolete.
Apr. 11, 1930, ch. 132, § 5, 46 Stat. 156 (35 U. S. C., 1946 ed. § 22).	Superseded by act of June 26, 1934, ch. 756, § 6, 48 Stat. 1223 (31 U. S. C., 1946 ed., § 725e).
May 23, 1930, ch. 312, § 5, 46 Stat. 376 (35 U. S. C., 1946 ed. § 32a).	Obsolete.
Feb. 1, 1952, ch. 4, § 12, 66 Stat. 6.....	Obsolete short title.

TABLE 4.—LAWS OMITTED BUT NOT REPEALED

Showing laws omitted from this revision but not included in the schedule of repeals

The following statutes are not included in the revision, since they are mainly of a temporary nature and will be appropriately codified as may be necessary.

Oct. 31, 1942, ch. 634, 56 Stat. 1013 (35 U.S.C., 1946 ed., §§ 89–97). Royalty Adjustment Act, expires by its terms.

Aug. 8, 1946, ch. 910, 60 Stat. 990 (35 U.S.C., 1946 ed., §§ 101–114). Boykin Act; except section 9 (35 U.S.C., 1946 ed. sec. 109) which is in section 104.

The time for taking action under this act has expired.

July 23, 1947, ch. 302, 61 Stat. 413. Extension of Boykin Act.

Aug. 6, 1947, ch. 511, 61 Stat. 794, relating to peace treaties and patents to citizens of Germany and Japan.

June 30, 1950, ch. 444, 64 Stat. 316 (35 U.S.C., 1946 ed., §§ 115–118). Relates to extensions of patents to veterans of World War II, the time for taking action under this act has expired.