

“(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) [§2011 et seq. of Title 42, The Public Health and Welfare].

“(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) [sections 151 to 159 of former Title 35], shall not affect any rights or liabilities existing on the date of approval of this Act [July 19, 1952]. An order of secrecy issued under or in effect under the repealed Act and in effect on the date of approval of this Act, shall be considered as issued under this Act, and any claims arising under the repealed Act or subject to presentation and determination pursuant thereto and unsettled as of the effective date of this Act, may be presented and determined pursuant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 [this title].”

REPEALS

Section 5 of act July 19, 1952, ch. 950, 66 Stat. 815, repealed the sections or parts of sections of the Revised Statutes or Statutes at Large codified in this Act with the proviso that “Any rights or liabilities now existing under such sections or parts thereof shall not be affected by this repeal.”

TITLE REFERRED TO IN OTHER SECTIONS

This title is referred to in title 11 section 101; title 15 sections 278n, 3703; title 17 sections 912, 1329; title 42 section 12002.

PART I—UNITED STATES PATENT AND TRADEMARK OFFICE

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AMENDMENTS

1999—Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4732(a)(2), (3)], Nov. 29, 1999, 113 Stat. 1536, 1501A–582, substituted “UNITED STATES PATENT AND TRADEMARK OFFICE” for “PATENT AND TRADEMARK OFFICE” in part heading and “Establishment, Officers and Employees, Functions” for “Establishment, Officers, Functions” in chapter 1 heading.

1991—Pub. L. 102–204, §5(d)(2)(D), Dec. 10, 1991, 105 Stat. 1640, substituted “before” for “Before the” in chapter 3 heading and inserted “; Funding; Search Systems” after “Fees” in chapter 4 heading.

1975—Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949, substituted “PATENT AND TRADEMARK OFFICE” for “PATENT OFFICE” in part heading and in headings for chapters 2 and 3.

¹ So in original. Probably should be capitalized.

CHAPTER 1—ESTABLISHMENT, OFFICERS AND EMPLOYEES, FUNCTIONS

Sec.	
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AMENDMENTS

1999—Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4732(a)(4)], Nov. 29, 1999, 113 Stat. 1536, 1501A–582, amended analysis generally, substituting “OFFICERS AND EMPLOYEES” for “OFFICERS” in chapter heading, substituting “Powers and duties” for “Seal” in item 2, adding item 5, renumbering items 7 to 14 as 6 to 13, respectively, striking out former item 6, “Duties of Commissioner”, and inserting “and applications” after “patent” in items 12 and 13.

Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §§4507(4), 4508], Nov. 29, 1999, 113 Stat. 1536, 1501A–566, which directed the insertion of “and applications” after “patents” in items 12 and 13, effective 1 year after Nov. 29, 1999, was not executed in item 12 to reflect the probable intent of Congress, and could not be executed in item 13, because the word “patents” did not appear subsequent to amendment by section 1000(a)(9) [title IV, §4732(a)(4)] of Pub. L. 106–113, which amended analysis generally. See above.

1984—Pub. L. 98–622, title II, §201(b), Nov. 8, 1984, 98 Stat. 3386, substituted “Patent Appeals and Interferences” for “Appeals” in item 7.

1972—Pub. L. 92–310, title II, §208(b), June 6, 1972, 86 Stat. 203, struck out item 5 “Bond of Commissioner and other officers”.

§ 1. Establishment

(a) ESTABLISHMENT.—The United States Patent and Trademark Office is established as an agency of the United States, within the Department of Commerce. In carrying out its functions, the United States Patent and Trademark Office shall be subject to the policy direction of the Secretary of Commerce, but otherwise shall retain responsibility for decisions regarding the management and administration of its operations and shall exercise independent control of its budget allocations and expenditures, personnel decisions and processes, procurements, and other administrative and management functions in accordance with this title and applicable provisions of law. Those operations designed to grant and issue patents and those operations which are designed to facilitate the registration of trademarks shall be treated as separate operating units within the Office.

(b) OFFICES.—The United States Patent and Trademark Office shall maintain its principal office in the metropolitan Washington, D.C., area, for the service of process and papers and for the purpose of carrying out its functions. The United States Patent and Trademark Office shall be deemed, for purposes of venue in civil

actions, to be a resident of the district in which its principal office is located, except where jurisdiction is otherwise provided by law. The United States Patent and Trademark Office may establish satellite offices in such other places in the United States as it considers necessary and appropriate in the conduct of its business.

(c) REFERENCE.—For purposes of this title, the United States Patent and Trademark Office shall also be referred to as the “Office” and the “Patent and Trademark Office”.

(July 19, 1952, ch. 950, 66 Stat. 792; Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4711], Nov. 29, 1999, 113 Stat. 1536, 1501A-572.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 1 (R.S. 475 and Executive Order 4175, Mar. 17, 1925).

The word “all” is omitted from the corresponding section of the existing statute and “except as otherwise provided by law” added, since some old records are kept in the National Archives, see 44 U.S.C., 1946 ed., ch. 8A.

The word “models” has been omitted to remove emphasis on models since they are no longer generally required. They are included by the word “things.”

The phrase “and to trade-mark registrations” is added. There is no enactment corresponding to this section in the trade-mark law. The original chapter of the Revised Statutes containing this section deals with the Patent Office as such in its administration of trade-marks as well as patents. This is explicitly brought out in some of the corresponding sections of the present chapter. Changes in language are made.

AMENDMENTS

1999—Pub. L. 106-113 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: “The Patent and Trademark 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 trademark registrations shall be kept and preserved, except as otherwise provided by law.”

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

CHANGE OF NAME

Section 3 of Pub. L. 93-596 provided that: “The terms ‘Patent Office’ and ‘Commissioner of Patents’ in all laws of the United States shall mean ‘Patent and Trademark Office’ and ‘Commissioner of Patents and Trademarks’, respectively.”

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, subtitle G, § 4731], Nov. 29, 1999, 113 Stat. 1536, 1501A-581, provided that: “This subtitle [see Tables for classification] and the amendments made by this subtitle shall take effect 4 months after the date of the enactment of this Act [Nov. 29, 1999].”

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

SHORT TITLE OF 1999 AMENDMENT

Pub. L. 106-113, div. B, § 1000(a)(9) [§ 1(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A-521, provided that: “This Act [S. 1948, as enacted by section 1000(a)(9) of Pub. L. 106-113, see Tables for classification] may be cited as the ‘Intellectual Property and Communications Omnibus Reform Act of 1999’.”

Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4001], Nov. 29, 1999, 113 Stat. 1536, 1501A-552, provided that:

“This title [see Tables for classification] may be cited as the ‘American Inventors Protection Act of 1999’.”

Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, subtitle A, § 4101], Nov. 29, 1999, 113 Stat. 1536, 1501A-552, provided that: “This subtitle [enacting section 297 of this title and provisions set out as a note under section 297 of this title] may be cited as the ‘Inventors’ Rights Act of 1999’.”

Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, subtitle B, § 4201], Nov. 29, 1999, 113 Stat. 1536, 1501A-554, provided that: “This subtitle [amending sections 41 and 42 of this title and enacting provisions set out as notes under section 41 of this title and section 1113 of Title 15, Commerce and Trade] may be cited as the ‘Patent and Trademark Fee Fairness Act of 1999’.”

Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, subtitle C, § 4301], Nov. 29, 1999, 113 Stat. 1536, 1501A-555, provided that: “This subtitle [enacting section 273 of this title and provisions set out as a note under section 273 of this title] may be cited as the ‘First Inventor Defense Act of 1999’.”

Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, subtitle D, § 4401], Nov. 29, 1999, 113 Stat. 1536, 1501A-557, provided that: “This subtitle [amending sections 132, 154, 156, and 282 of this title and section 1295 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as notes under sections 132 and 154 of this title] may be cited as the ‘Patent Term Guarantee Act of 1999’.”

Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, subtitle E, § 4501], Nov. 29, 1999, 113 Stat. 1536, 1501A-561, provided that: “This subtitle [amending sections 11 to 13, 102, 119, 120, 122, 135, 154, 181, 252, 284, and 374 of this title and enacting provisions set out as notes under sections 11, 41, and 122 of this title] may be cited as the ‘Domestic Publication of Foreign Filed Patent Applications Act of 1999’.”

Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, subtitle F, § 4601], Nov. 29, 1999, 113 Stat. 1536, 1501A-567, provided that: “This subtitle [enacting chapter 31 of this title, amending sections 41, 100, 134, 141, 143, and 145 of this title, and enacting provisions set out as notes under sections 41, 311, and 315 of this title] may be cited as the ‘Optional Inter Partes Reexamination Procedure Act of 1999’.”

Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, subtitle G, § 4701], Nov. 29, 1999, 113 Stat. 1536, 1501A-572, provided that: “This subtitle [see Tables for classification] may be cited as the ‘Patent and Trademark Office Efficiency Act’.”

SHORT TITLE OF 1998 AMENDMENTS

Pub. L. 105-358, § 1, Nov. 10, 1998, 112 Stat. 3272, provided that: “This Act [amending sections 41 and 42 of this title and enacting provisions set out as a note under section 41 of this title] may be cited as the ‘United States Patent and Trademark Office Reauthorization Act, Fiscal Year 1999’.”

Pub. L. 105-289, § 1, Oct. 27, 1998, 112 Stat. 2780, provided that: “This Act [amending section 163 of this title and enacting provisions set out as notes under sections 41 and 163 of this title] may be cited as the ‘Plant Patent Amendments Act of 1998’.”

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100-418, § 9001, Aug. 23, 1988, 102 Stat. 1563, provided that: “This subtitle [subtitle A (§§ 9001-9007) of title IX of Pub. L. 100-418, enacting section 295 of this title, amending sections 154, 271, and 287 of this title, and enacting provisions set out as notes under section 271 of this title] may be cited as the ‘Process Patent Amendments Act of 1988’.”

Pub. L. 100-418, title IX, § 9101(a), Aug. 23, 1988, 102 Stat. 1567, provided that: “This section [amending sections 184 to 186 of this title and enacting provisions set out as notes under section 184 of this title] may be cited as the ‘Patent Law Foreign Filing Amendments Act of 1988’.”

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-622, § 1, Nov. 8, 1984, 98 Stat. 3383, provided that: “This Act [enacting section 157 of this title,

amending sections 3, 7, 41, 103, 104, 116, 120, 134, 135, 141, 145, 146, 271, 305, 351, 361, 362, 365 to 368, 371 to 373, and 376 of this title, section 1295 of Title 28, Judiciary and Judicial Procedure, and sections 2182 and 2457 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under sections 7, 41, 103, 157, and 351 of this title] may be cited as the ‘Patent Law Amendments Act of 1984.’”

TRANSFER OF FUNCTIONS AND ASSETS OF PATENT AND TRADEMARK OFFICE

Pub. L. 106-113, div. B, §1000(a)(9) [title IV, subtitle G, chapter 3], Nov. 29, 1999, 113 Stat. 1536, 1501A-585, provided that:

“SEC. 4741. REFERENCES.

“(a) IN GENERAL.—Any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a department or office from which a function is transferred by this subtitle [see Tables for classification]—

“(1) to the head of such department or office is deemed to refer to the head of the department or office to which such function is transferred; or

“(2) to such department or office is deemed to refer to the department or office to which such function is transferred.

“(b) SPECIFIC REFERENCES.—Any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to the Patent and Trademark Office—

“(1) to the Commissioner of Patents and Trademarks is deemed to refer to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office;

“(2) to the Assistant Commissioner for Patents is deemed to refer to the Commissioner for Patents; or

“(3) to the Assistant Commissioner for Trademarks is deemed to refer to the Commissioner for Trademarks.

“SEC. 4742. EXERCISE OF AUTHORITIES.

“Except as otherwise provided by law, a Federal official to whom a function is transferred by this subtitle may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date of the transfer of the function under this subtitle.

“SEC. 4743. SAVINGS PROVISIONS.

“(a) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, agreements, certificates, licenses, and privileges—

“(1) that have been issued, made, granted, or allowed to become effective by the President, the Secretary of Commerce, any officer or employee of any office transferred by this subtitle, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred by this subtitle; and

“(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date), shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorized official, a court of competent jurisdiction, or operation of law.

“(b) PROCEEDINGS.—This subtitle shall not affect any proceedings or any application for any benefits, service, license, permit, certificate, or financial assistance pending on the effective date of this subtitle [see Effective Date of 1999 Amendment note above] before an office transferred by this subtitle, but such proceedings and applications shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this subtitle had not been enacted, and orders issued in any such proceeding shall continue in ef-

fect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this subtitle had not been enacted.

“(c) SUITS.—This subtitle shall not affect suits commenced before the effective date of this subtitle, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this subtitle had not been enacted.

“(d) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of Commerce or the Secretary of Commerce, or by or against any individual in the official capacity of such individual as an officer or employee of an office transferred by this subtitle, shall abate by reason of the enactment of this subtitle.

“(e) CONTINUANCE OF SUITS.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and under this subtitle such function is transferred to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

“(f) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this subtitle, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred by this subtitle shall apply to the exercise of such function by the head of the Federal agency, and other officers of the agency, to which such function is transferred by this subtitle.

“SEC. 4744. TRANSFER OF ASSETS.

“Except as otherwise provided in this subtitle, so much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with a function transferred to an official or agency by this subtitle shall be available to the official or the head of that agency, respectively, at such time or times as the Director of the Office of Management and Budget directs for use in connection with the functions transferred.

“SEC. 4745. DELEGATION AND ASSIGNMENT.

“Except as otherwise expressly prohibited by law or otherwise provided in this subtitle, an official to whom functions are transferred under this subtitle (including the head of any office to which functions are transferred under this subtitle) may delegate any of the functions so transferred to such officers and employees of the office of the official as the official may designate, and may authorize successive redelegations of such functions as may be necessary or appropriate. No delegation of functions under this section or under any other provision of this subtitle shall relieve the official to whom a function is transferred under this subtitle of responsibility for the administration of the function.

“SEC. 4746. AUTHORITY OF DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET WITH RESPECT TO FUNCTIONS TRANSFERRED.

“(a) DETERMINATIONS.—If necessary, the Director of the Office of Management and Budget shall make any determination of the functions that are transferred under this subtitle.

“(b) INCIDENTAL TRANSFERS.—The Director of the Office of Management and Budget, at such time or times as the Director shall provide, may make such determinations as may be necessary with regard to the functions transferred by this subtitle, and to make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with

such functions, as may be necessary to carry out the provisions of this subtitle. The Director shall provide for the termination of the affairs of all entities terminated by this subtitle and for such further measures and dispositions as may be necessary to effectuate the purposes of this subtitle.

“SEC. 4747. CERTAIN VESTING OF FUNCTIONS CONSIDERED TRANSFERS.

“For purposes of this subtitle, the vesting of a function in a department or office pursuant to reestablishment of an office shall be considered to be the transfer of the function.

“SEC. 4748. AVAILABILITY OF EXISTING FUNDS.

“Existing appropriations and funds available for the performance of functions, programs, and activities terminated pursuant to this subtitle shall remain available, for the duration of their period of availability, for necessary expenses in connection with the termination and resolution of such functions, programs, and activities, subject to the submission of a plan to the Committees on Appropriations of the House and Senate in accordance with the procedures set forth in section 605 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999, as contained in Public Law 105-277 [112 Stat. 2681-111].

“SEC. 4749. DEFINITIONS.

“For purposes of this subtitle—

“(1) the term ‘function’ includes any duty, obligation, power, authority, responsibility, right, privilege, activity, or program; and

“(2) the term ‘office’ includes any office, administration, agency, bureau, institute, council, unit, organizational entity, or component thereof.”

FEDERAL AGENCY STATUS FOR PATENT AND
TRADEMARK OFFICE

Pub. L. 101-508, title X, §10102, Nov. 5, 1990, 104 Stat. 1388-392, provided that: “For the purposes of Federal law, the Patent and Trademark Office shall be considered a Federal agency. In particular, the Patent and Trademark Office shall be subject to all Federal laws pertaining to the procurement of goods and services that would apply to a Federal agency using appropriated funds, including the Federal Property and Administrative Services Act of 1949 [see Short Title note set out under section 471 of Title 40, Public Buildings, Property, and Works] and the Office of Federal Procurement Policy Act [41 U.S.C. 401 et seq.].”

§ 2. Powers and duties

(a) IN GENERAL.—The United States Patent and Trademark Office, subject to the policy direction of the Secretary of Commerce—

(1) shall be responsible for the granting and issuing of patents and the registration of trademarks; and

(2) shall be responsible for disseminating to the public information with respect to patents and trademarks.

(b) SPECIFIC POWERS.—The Office—

(1) shall adopt and use a seal of the Office, which shall be judicially noticed and with which letters patent, certificates of trademark registrations, and papers issued by the Office shall be authenticated;

(2) may establish regulations, not inconsistent with law, which—

(A) shall govern the conduct of proceedings in the Office;

(B) shall be made in accordance with section 553 of title 5, United States Code;

(C) shall facilitate and expedite the processing of patent applications, particularly

those which can be filed, stored, processed, searched, and retrieved electronically, subject to the provisions of section 122 relating to the confidential status of applications;

(D) may govern the recognition and conduct of agents, attorneys, or other persons representing applicants or other parties before the 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;

(E) shall recognize the public interest in continuing to safeguard broad access to the United States patent system through the reduced fee structure for small entities under section 41(h)(1) of this title; and

(F) provide for the development of a performance-based process that includes quantitative and qualitative measures and standards for evaluating cost-effectiveness and is consistent with the principles of impartiality and competitiveness;

(3) may acquire, construct, purchase, lease, hold, manage, operate, improve, alter, and renovate any real, personal, or mixed property, or any interest therein, as it considers necessary to carry out its functions;

(4)(A) may make such purchases, contracts for the construction, maintenance, or management and operation of facilities, and contracts for supplies or services, without regard to the provisions of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.), the Public Buildings Act (40 U.S.C. 601 et seq.), and the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 et seq.); and

(B) may enter into and perform such purchases and contracts for printing services, including the process of composition, platemaking, presswork, silk screen processes, binding, microform, and the products of such processes, as it considers necessary to carry out the functions of the Office, without regard to sections 501 through 517 and 1101 through 1123 of title 44, United States Code;

(5) may use, with their consent, services, equipment, personnel, and facilities of other departments, agencies, and instrumentalities of the Federal Government, on a reimbursable basis, and cooperate with such other departments, agencies, and instrumentalities in the establishment and use of services, equipment, and facilities of the Office;

(6) may, when the Director determines that it is practicable, efficient, and cost-effective to do so, use, with the consent of the United States and the agency, instrumentality, Patent and Trademark Office, or international organization concerned, the services, records, facilities, or personnel of any State or local government agency or instrumentality or foreign patent and trademark office or international organization to perform functions on its behalf;

(7) may retain and use all of its revenues and receipts, including revenues from the sale,