

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.

(July 19, 1952, ch. 950, 66 Stat. 801; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

#### HISTORICAL AND REVISION NOTES

This section enacts the Patent Office rule of secrecy of applications.

#### AMENDMENTS

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

#### 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 an Effective Date of 1975 Amendment note under section 1111 of Title 15, Commerce and Trade.

### CHAPTER 12—EXAMINATION OF APPLICATION

Sec.

- 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.

(July 19, 1952, ch. 950, 66 Stat. 801.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 36 (R.S. 4893). The first part is revised in language and amplified. The phrase "and that the invention is sufficiently useful and important" is omitted as unnecessary, the requirements for patentability being stated in sections 101, 102 and 103.

#### CROSS REFERENCES

Issue of patent, generally, see section 151 et seq. of this title.

Patentability of invention generally, see section 100 et seq. of this title.

Proceedings in the Patent and Trademark Office, see section 21 et seq. of this title.

#### § 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.

(July 19, 1952, ch. 950, 66 Stat. 801.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 51 (R.S. 4903, amended Aug. 5, 1939, ch. 452, § 1, 53 Stat. 1213).

The first paragraph of the corresponding section of existing statute is revised in language and amplified to incorporate present practice; the second paragraph of the existing statute is placed in section 135.

The last sentence relating to new matter is added but represents no departure from present practice.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 41 of this title.

#### § 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.

(July 19, 1952, ch. 950, 66 Stat. 801.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 37 (R.S. 4894, amended (1) Mar. 3, 1897, ch. 391, § 4, 29 Stat. 692, 693, (2) July 6, 1916, ch. 225, § 1, 39 Stat. 345, 347-8, (3) Mar. 2, 1927, ch. 273, § 1, 44 Stat. 1335, (4) Aug. 7, 1939, ch. 568, 53 Stat. 1264).

The opening clause of the corresponding section of existing statute is omitted as having no present day meaning or value and the last two sentences are omitted for inclusion in section 267. The notice is stated as given or mailed. Language is revised.

#### CROSS REFERENCES

Abandonment of invention as denying patentability, see section 102 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 267 of this title.

#### § 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.

(July 19, 1952, ch. 950, 66 Stat. 801.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 57 (R.S. 4909 amended (1) Mar. 2, 1927, ch. 273, § 5, 44 Stat. 1335, 1336, (2) Aug. 5, 1939, ch. 451, § 2, 53 Stat. 1212).

Reference to reissues is omitted in view of the general provision in section 251. Minor changes in language are made.

#### CROSS REFERENCES

Appeals to Commissioner from decisions of examiners on applications for registration of trade-marks, see section 1070 of Title 15, Commerce and Trade.

Board of Appeals, composition and duties, see section 7 of this title.

#### § 135. Interferences

(a) 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 appli-

cant 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 and Trademark 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 and Trademark Office.

(b) 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.

(c) Any agreement or understanding between parties to an interference, including any collateral agreements referred to therein, made in connection with or in contemplation of the termination of the interference, shall be in writing and a true copy thereof filed in the Patent and Trademark Office before the termination of the interference as between the said parties to the agreement or understanding. If any party filing the same so requests, the copy shall be kept separate from the file of the interference, and made available only to Government agencies on written request, or to any person on a showing of good cause. Failure to file the copy of such agreement or understanding shall render permanently unenforceable such agreement or understanding and any patent of such parties involved in the interference or any patent subsequently issued on any application of such parties so involved. The Commissioner may, however, on a showing of good cause for failure to file within the time prescribed, permit the filing of the agreement or understanding during the six month period subsequent to the termination of the interference as between the parties to the agreement or understanding.

The Commissioner shall give notice to the parties or their attorneys of record, a reasonable time prior to said termination, of the filing requirement of this section. If the Commissioner gives such notice at a later time, irrespective of the right to file such agreement or understanding within the six-month period on a showing of good cause, the parties may file such agreement or understanding within sixty days of the receipt of such notice.

Any discretionary action of the Commissioner under this subsection shall be reviewable under section 10 of the Administrative Procedure Act. (July 19, 1952, ch. 950, 66 Stat. 801; Oct. 15, 1962, Pub. L. 87-831, 76 Stat. 958; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

#### HISTORICAL AND REVISION NOTES

The first paragraph is based on Title 35, U.S.C., 1946 ed., § 52 (R.S. 4904 amended (1) Mar. 2, 1927, ch. 273, § 4, 44 Stat. 1335, 1336, (2) Aug. 5, 1939, ch. 451, § 1, 53 Stat. 1212).

The first paragraph states the existing corresponding statute with a few changes in language. An explicit

statement that the Office decision on priority constitutes a final refusal by the Office of the claims involved, is added. The last sentence is new and provides that judgment adverse to a patentee constitutes cancellation of the claims of the patent involved after the judgment has become final, the patentee has a right of appeal (sec. 141) and is given a right of review by civil action (sec. 146).

The second paragraph is based on Title 35, U.S.C., 1946 ed., § 51, (R.S. 4903, amended Aug. 5, 1939, ch. 452, § 1, 53 Stat. 1213). Changes in language are made.

#### REFERENCES IN TEXT

Section 10 of the Administrative Procedure Act, referred to in subsec. (c), is section 10 of act June 11, 1946, ch. 324, 60 Stat. 243, which was repealed by Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 632, and reenacted by the first section thereof as chapter 7 (§ 701 et seq.) of Title 5, Government Organization and Employees.

#### AMENDMENTS

1975—Subsec. (a). Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office" in two places.

Subsec. (c). Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

1962—Pub. L. 87-831 designated the first and second paragraphs as subsecs. (a) and (b), and added subsec. (c).

#### 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 an Effective Date of 1975 Amendment note under section 1111 of Title 15, Commerce and Trade.

#### CROSS REFERENCES

Decision of board of patent interferences—  
Appeal to the United States Court of Customs and Patent Appeals, see section 141 of this title.  
Civil action, see section 146 of this title.  
Jurisdiction of United States Court of Customs and Patent Appeals, see section 1542 of Title 28, Judiciary and Judicial Procedure.  
Equitable relief against interfering patents, see section 291 of this title.

#### CHAPTER 13—REVIEW OF PATENT AND TRADEMARK OFFICE DECISIONS

Sec.

141. Appeal to Court of Customs and Patent Appeals.
142. Notice of appeal.
143. Proceedings on appeal.
144. Decision on appeal.
145. Civil action to obtain patent.
146. Civil action in case of interference.

#### AMENDMENTS

1975—Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949, substituted "Patent and Trademark Office" for "Patent Office" in chapter heading.

§ 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