

Board of Patent Appeals and Interferences" for "a Board of Appeals, which on written appeal of the applicant, shall review adverse decisions of examiners upon applications for patents".

Subsec. (b). Pub. L. 98-622 designated final two sentences of existing first paragraph as subsec. (b), and in subsec. (b) as so designated, added first sentence, substituted "Board of Patent Appeals and Interferences" for "Board of Patent Appeals" in two places and further substituted "authority" for "sole power" before "to grant rehearings" in third sentence.

Subsec. (c). Pub. L. 98-622 designated existing second paragraph as subsec. (c), and in subsec. (c) as so designated, substituted "Board of Patent Appeals and Interferences" for "Board of Patent Appeals" wherever appearing, added "or determining an interference" before "may be an examiner so designated", substituted "maximum rate of basic pay payable for grade GS-16 of the General Schedule under section 5332 of title 5" for "maximum scheduled rate provided for positions in grade 16 of the General Schedule of the Classification Act of 1949, as amended", and substituted "rate of basic pay" for "per annum rate of basic compensation" in two places.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 207 of title II of Pub. L. 98-622 provided that: "Section 206 of this Act [set out as a note below] and the amendments made by this title [amending sections 7, 41, 134, 135, 141, 145, 146, and 305 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] shall take effect three months after the date of the enactment of this Act [Nov. 8, 1984]."

SAVINGS PROVISION

Section 206 of title II of Pub. L. 98-622 provided that: "Any individual who, on the effective date of this title [see Effective Date of 1984 Amendment note above], is an examiner-in-chief of the Board of Patent Appeals of the Patent and Trademark Office or an examiner of interferences of the Board of Patent Interferences of such office shall be entitled to continue in office as a member of the Board of Patent Appeals and Interferences of the Patent and Trademark Office as of such effective date."

CHAPTER 4—PATENT FEES

§ 41. Patent fees

(a) The Commissioner shall charge the following fees:

[See main edition for text of (1) to (5)]

6. On filing an appeal from the examiner to the Board of Patent Appeals and Interferences, \$115; in addition, on filing a brief in support of the appeal, \$115, and on requesting an oral hearing in the appeal before the Board of Patent Appeals and Interferences, \$100.

[See main edition for text of (7) and (8);
(b) to (g)]

(As amended Nov. 8, 1984, Pub. L. 98-622, title II, § 204(a), 98 Stat. 3388.)

AMENDMENTS

1984—Subsec. (a)(6). Pub. L. 98-622 substituted "Patent Appeals and Interferences" for "Appeals" in two places and added "in the appeal" after "oral hearing".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-622 effective three months after Nov. 8, 1984, see section 207 of Pub. L. 98-622, set out as a note under section 7 of this title.

PATENT FEES

Section 404 of Pub. L. 98-622 provided that:

"(a) Notwithstanding section 41 of title 35, United States Code, as in effect before the enactment of Public Law 97-247 (96 Stat. 317) [Aug. 27, 1982], no fee shall be collected for maintaining a plant patent in force.

"(b) Notwithstanding section 41(c) of title 35, United States Code, as in effect before the enactment of Public Law 97-247 (96 Stat. 317) [Aug. 27, 1982], the Commissioner of Patents and Trademarks may accept, after the six-month grace period referred to in such section 41(c), the payment of any maintenance fee due on any patent based on an application filed in the Patent and Trademark Office on or after December 12, 1980, and before August 27, 1982, to the same extent as in the case of patents based on applications filed in the Patent and Trademark Office on or after August 27, 1982."

PART II—PATENTABILITY OF INVENTIONS AND GRANT OF PATENTS

CHAPTER 10—PATENTABILITY OF INVENTIONS

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

[See main edition for text of first par.]

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

(As amended Nov. 8, 1984, Pub. L. 98-622, title I, § 103, 98 Stat. 3384.)

AMENDMENTS

1984—Pub. L. 98-622 added "Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person."

EFFECTIVE DATE OF 1984 AMENDMENT

Section 106 of Pub. L. 98-622 provided that:

"(a) Subject to subsections (b), (c), (d), and (e) of this section, the amendments made by this Act [probably should be "this title", meaning title I of Pub. L. 98-622, enacting section 157 of this title, amending sections 103, 116, 120, 135, and 271 of this title, and enacting a provision set out as a note under section 157 of this title] shall apply to all United States patents granted before, on, or after the date of enactment of this Act [Nov. 8, 1984], and to all applications for United States patents pending on or filed after the date of enactment.

"(b) The amendments made by this Act shall not affect any final decision made by the court or the Patent and Trademark Office before the date of enactment of this Act [Nov. 8, 1984], with respect to a patent or application for patent, if no appeal from such decision is pending and the time for filing an appeal has expired.

"(c) Section 271(f) of title 35, United States Code, added by section 101 of this Act shall apply only to the supplying, or causing to be supplied, of any component or components of a patented invention after the date of enactment of this Act [Nov. 8, 1984].

"(d) No United States patent granted before the date of enactment of this Act [Nov. 8, 1984] shall abridge or affect the right of any person or his successors in business who made, purchased, or used prior to such effective date anything protected by the patent, to continue the use of, or to sell to others to be used or sold, the specific thing so made, purchased, or used, if the patent claims were invalid or otherwise unenforceable on a ground obviated by section 103 or 104 of this Act [amending sections 103, 116, and 120 of this title] and the person made, purchased, or used the specific thing in reasonable reliance on such invalidity or unenforceability. If a person reasonably relied on such invalidity or unenforceability, 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 date of enactment of this Act [Nov. 8, 1984], and it may also provide for the continued practice of any process practiced, or for the practice of which substantial preparation was made, prior to the date of enactment [Nov. 8, 1984], to the extent and under such terms as the court deems equitable for the protection of investments made or business commenced before the date of enactment [Nov. 8, 1984].

"(e) The amendments made by this Act shall not affect the right of any party in any case pending in court on the date of enactment [Nov. 8, 1984] to have their rights determined on the basis of the substantive law in effect prior to the date of enactment [Nov. 8, 1984]."

§ 104. Invention made abroad

In proceedings in the Patent and Trademark 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 sections 119 and 365 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.

(As amended Nov. 8, 1984, Pub. L. 98-622, title IV, § 403(a), 98 Stat. 3392.)

AMENDMENTS

1984—Pub. L. 98-622 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-622 effective on Nov. 8, 1984, see section 406(a) of Pub. L. 98-622, set out as a note under section 351 of this title.

CHAPTER 11—APPLICATION FOR PATENT

§ 112. Specification

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 41, 111, 120, 157, 162, 282 of this title.

§ 116. Inventors

When an invention is made by two or more persons jointly, they shall apply for patent jointly and each make the required oath, except as otherwise provided in this title. Inventors may apply for a patent jointly even though (1) they did not physically work togeth-

er or at the same time, (2) each did not make the same type or amount of contribution, or (3) each did not make a contribution to the subject matter of every claim of the patent.

[See main edition for text of second and third pars.]

(As amended Nov. 8, 1984, Pub. L. 98-622, title I, § 104(a), 98 Stat. 3384.)

AMENDMENTS

1984—Pub. L. 98-622 amended first par. generally, striking out "and each sign the application" after "patent jointly" and adding sentence beginning "Inventors may apply".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-622, applicable to all United States patents granted before, on, or after Nov. 8, 1984, and to all applications for United States patents pending on or filed after that date, except as otherwise provided, see section 106 of Pub. L. 98-622, set out as a note under section 103 of this title.

§ 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, or as provided by section 363 of this title, which is filed by an inventor or inventors named in the previously filed application 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.

(As amended Nov. 8, 1984, Pub. L. 98-622, title I, § 104(b), 98 Stat. 3385.)

AMENDMENTS

1984—Pub. L. 98-622 substituted "which is filed by an inventor or inventors named in the previously filed application" for "by the same inventor".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-622, applicable to all United States patents granted before, on, or after Nov. 8, 1984, and to all applications for United States patents pending on or filed after that date, except as otherwise provided, see section 106 of Pub. L. 98-622, set out as a note under section 103 of this title.

CHAPTER 12—EXAMINATION OF APPLICATION

Sec.

134. Appeal to the Board of Patent Appeals and Interferences.

AMENDMENTS

1984—Pub. L. 98-622, title II, § 204(b)(2), Nov. 8, 1984, 98 Stat. 3388, substituted "Patent Appeals and Interferences" for "Appeals" in item 134.