

PROPOSED REVISION AND AMENDMENT  
OF THE  
PATENT LAWS

PRELIMINARY DRAFT  
WITH NOTES



COMMITTEE PRINT  
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House of Representatives

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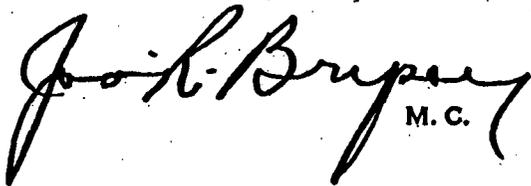
CHARLES J. ZINN, *Law Revision Counsel*

## FOREWORD

This preliminary draft of a proposed bill for a general revision and codification of the patent laws is issued by the subcommittee of the Committee on the Judiciary, having jurisdiction over patents and over revision of the laws, for the purpose of inviting suggestions, comments and criticisms relating to amending the patent laws. The draft presented is intended primarily to serve as a basis for the expression of opinions. Criticisms and suggestions for improvement of anything contained in the draft, and suggestions of additional proposals for consideration, as well as support for anything contained in the draft, are specially invited. All comments received before May 1, 1950, will be carefully considered for the preparation of a bill to be introduced on the subject.

While the present draft has been prepared for the Subcommittee, at its request and in accordance with its instructions, the draft is not intended to represent the Subcommittee's views and recommendations on any particular change in the patent laws. The subcommittee's views and recommendations will be formulated only after the opinions of the interested public have been received and considered.

JANUARY 10, 1950.



M. C.

*Chairman, Subcommittee No. 4.*

## INTRODUCTION

The present patent laws consist of about 60 sections of the Revised Statutes of 1874, together with over 60 acts of Congress passed since that date revising various sections of the Revised Statutes or making new enactments not related to any section of the Revised Statutes. Since the sections of the Revised Statutes relating to patents were merely a compilation of the act of 1870, our present patent law which is set out in title 35 of the United States Code is essentially the act of 1870 with subsequent enactments.

The last general revision of the patent laws was the act of July 8, 1870, which was enacted as part of a program to revise and consolidate all the laws of the United States. In 1866 Congress passed a law providing for the revision and consolidation of the statutes of the United States. The commission which was appointed to perform this work prepared a preliminary draft of the part relating to patents and copyrights in 1868, and a second preliminary draft in 1869. In 1870, the statute relating to patents and copyrights as revised, simplified, arranged, and consolidated by the commission was reported to Congress, and at the same time referred to the Committee on Patents and a bill was introduced by the chairman a few days later. The object of the commission on revision of the laws was only to revise, arrange, and consolidate the statutes in force and the draft reported from the commission presumably was for this purpose only. The probable reason for referring the matter to the Committee on Patents was that during this same period there had been many suggestions for amending the patent laws in substance and it appears that the Committee on Patents studied the draft of the commission and changed it by various amendments on matters of substance. The bill thus introduced was enacted on July 8, 1870 (16 Stat. 198), and included the subjects of copyrights and trade-marks as well as patents.

When the Revised Statutes as in force on December 1, 1873, were enacted on June 22, 1874, the sections of the act of 1870 were distributed in various parts of the Revised Statutes. Certain sections were incorporated in Title 60, Patents, Trade-marks and Copyrights as sections 4883 to 4936, of Chapter I, Patents; other sections became sections 475 to 496 of Chapter 6, The Patent Office, in Title 11, Department of the Interior; a few sections were placed in other chapters, and a few sections were merged in broader provisions.

## INTRODUCTION

The present proposed revision of the patent laws has the same general objects as the last revision made in 1870. First, there is the problem of revising, arranging, and consolidating the various acts relating to patents which have been enacted since 1874. The United States Code was first compiled and published in 1926, but the Code was not enacted as law but only *prima facie* evidence of the law. The Committee on the Judiciary, having jurisdiction over revision of the laws, has undertaken to revise and enact from time to time various titles of the United States Code. The recent enactment of Title 18, Crimes and Criminal Procedure, and Title 28, Judiciary and Judicial Procedure, illustrates this work. The present proposed revision undertakes as one of its objects the revision and enactment of Title 35, Patents. In this aspect of the work, the acts relating to patents are arranged and consolidated into a single enactment with revisions and simplifications made in coordinating the various acts. In preparing this part of the draft, all the acts of Congress relating to or mentioning patents which have been passed since 1874 have been studied, and those acts which have not been specifically repealed have been used in preparing the revision.

The second object of the present draft is to present various amendments of substance. In selecting the amendments the following sources have been consulted: (1) All the bills relating to patents which have been introduced in Congress since 1925, and some earlier bills, together with any hearings and reports on these bills; (2) the reports of the Science Advisory Board (1935), the Temporary National Economic Committee (1941) and the National Patent Planning Commission (1943, 1944, 1945), (3) reports and recommendations of private groups such as the American Bar Association, Patent, Trade-mark and Copyright Section, and (4) miscellaneous sources such as books, articles in legal periodicals, etc.

The amendments included are of various kinds, some have had substantial support in the past, some appear to be substantial improvements in the patent law, and some involve problems which the committee may wish to investigate. In general, the amendments are so incorporated in the draft that if desired they can be deleted without difficulty, but a number of proposals are presented as separate additional items instead of being incorporated in the body of the draft. A number of the amendments and proposals have been inserted in broad terms to serve merely as a starting point for discussion, these relate to subjects on which the committee desires to hear expressions of opinion. Two items, the proposal for a single court of patent appeals and the proposal for copyright registration of designs have been left for subsequent presentation.

## INTRODUCTION

In this presentation of the preliminary draft of the proposed revision, the text of the existing acts are placed following the section of the revision which replaces them or to which they are most nearly related. In each instance the text of the original enactments are given and, where differences are found between them and the United States Code the enactments are followed, but references are included to the appropriate sections of the United States Code. This presentation makes the changes over existing law readily apparent and the notes also call attention to changes over existing law which are included.

# SECTION ANALYSIS

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## CHAPTER 1. PATENT OFFICE

### Section

1. Establishment.
2. Seal.
3. Officers and employees.
4. Restrictions on officers and employees as to interest in patents.
5. Bond of Commissioner and other officers.
6. Duties of Commissioner.
7. Board of appeals.
8. Library.
9. Classification of patents.
10. Certified copies of records.
11. Disposition of old records.
12. Publications.
13. Exchange of copies of patents with foreign countries.
14. Copies of patents for public libraries.
15. Printing of papers filed.
16. Annual report to Congress.
17. Day for taking action falling on Sunday or holiday.
18. Agents and attorneys, rules and regulations for.
19. Agents and attorneys, suspension or exclusion from practice.
20. Patent agents and attorneys, unauthorized representation as practitioner.

## CHAPTER 2. PATENTABILITY OF INVENTIONS

21. Inventions patentable.
22. Conditions for patentability; novelty and loss of right to patent.
23. Conditions for patentability; lack of invention.
24. Undisclosed prior knowledge or use.
25. Limitation on proof of date of invention.
26. Invention made abroad.

## CHAPTER 3. APPLICATION FOR PATENT

27. Application for patent.
28. Specification.
29. Drawings.
30. Models, specimens.
31. Oath of applicant.
32. Joint inventors.
33. Death or insanity of inventor.
34. Right of priority based on foreign application.
35. Date of continuing application.

## SECTION ANALYSIS

### Section

- 36. Divisional applications.
- 37. Confidential status of applications.
- 38. Secrecy of certain inventions.
- 39. Filing evidence of invention.

## CHAPTER 4. EXAMINATION OF APPLICATION

- 40. Examination of application.
- 41. Notice of rejection.
- 42. Time for prosecuting application.
- 43. Appeal to the Board of Appeals.

## CHAPTER 5. INTERFERENCES

- 44. Interferences.
- 45. Testimony.
- 46. Subpoenas, witnesses.

## CHAPTER 6. REVIEW OF PATENT OFFICE DECISIONS

- 47. Appeal to Court of Customs and Patent Appeals.
- 48. Same. Notice of appeal.
- 49. Same. Proceedings on appeal.
- 50. Same. Decision on appeal.
- 51. Civil action to obtain patent.
- 52. Civil action in case of interference.

## CHAPTER 7. ISSUE OF PATENT

- 53. Time of issue of patent.
- 54. Issue of patent to assignee.
- 55. How issued.
- 56. Contents of patent.
- 57. Term of patent.

## CHAPTER 8. AMENDMENT AND CORRECTION OF PATENTS

- 58. Reissue of defective patents.
- 59. Same. Effect of reissue.
- 60. Disclaimer of invalid claims.
- 61. Certificate of correction of Patent Office mistake.
- 62. Certificate of correction of applicant's mistake.
- 63. Misjoinder of inventor.

## CHAPTER 9. OWNERSHIP, ASSIGNMENTS, AND LICENSES

- 64. Ownership, assignments.
- 65. Joint ownership.
- 66. Licenses, conditions in contracts.
- 67. Recording license agreements.

## SECTION ANALYSIS

### CHAPTER 10. GOVERNMENT INTERESTS IN PATENTS

#### Section

68. Issue of patents without fees to Government officers for inventions used in public service.
69. Time for taking action in Government applications.
70. Inventions of Government employees.
71. Use of Government-owned patents.

### CHAPTER 11. INFRINGEMENT OF PATENTS

72. Infringement of patent.
73. Experimental use.
74. Use on board ships.
75. Purchase from inventor before patent.
76. Use by the Government.
77. Adjustment of royalties in case of Government use.

### CHAPTER 12. REMEDIES FOR INFRINGEMENT OF PATENT AND OTHER ACTIONS

78. Remedies for infringement of patent.
79. Defenses, presumption of validity.
80. Injunction.
81. Damages.
82. Attorneys' fees.
83. Limitation on damages, time.
84. Limitation on damages, marking and notice.
85. Suit for infringement when a claim may be invalid.
86. Notice of patent suits.
87. Interfering patents.
88. False marking.

### CHAPTER 13. PLANTS

89. Patents for plants.
90. Description, claim.
91. Grant.
92. Assistance of Department of Agriculture.

### CHAPTER 14. DESIGNS

93. Patents for designs.
94. Specification.
95. Right of priority.
96. Term.
97. Additional remedy for infringement.

### CHAPTER 15. PATENT OFFICE FEES

98. Patent fees.
99. Payment of patent fees; return of excess payments.

## SECTION ANALYSIS

### CHAPTER 16. MISCELLANEOUS PROVISIONS

#### Section

- 100. Separability clause.
- 101. Repeal.
- 102. Time of taking effect.

#### ADDITIONAL ITEMS

- 1. Revocation or cancellation of patents.
- 2. Compulsory licenses.
- 3. Short-term or minor patents.
- 4. Patents of addition.
- 5. Maintenance or renewal fees.

# UNITED STATES CODE

## PROPOSED REVISION AND AMENDMENT

### TITLE 35—PATENTS

#### CHAPTER 1. PATENT OFFICE

Sec.

1. Establishment.
2. Seal.
3. Officers and employees.
4. Restrictions on officers and employees as to interest in patents.
5. Bond of Commissioner and other officers.
6. Duties of Commissioner.
7. Board of Appeals.
8. Library.
9. Classification of patents.
10. Certified copies of records.
11. Disposition of old records.
12. Publications.
13. Exchange of copies of patents with foreign countries.
14. Copies of patents for public libraries.
15. Printing of papers filed.
16. Annual report to Congress.
17. Day for taking action falling on Sunday or holiday.
18. Agents and attorneys, rules and regulations for.
19. Agents and attorneys, suspension or exclusion from practice.
20. Patent agents and attorneys, unauthorized representation as practitioner.

#### § 1. Establishment

- 1 There shall be in the Department of Commerce an office known
- 2 as the Patent Office, where records, books, drawings, specifications,
- 3 and other papers and things pertaining to patents and to trade-mark
- 4 registrations shall be safely kept and preserved.

#### Present statute

Sec. 475, Revised Statutes of 1874 [35 U. S. C. 1]:

There shall be in the Department of the Interior [Commerce] an office known as the Patent-Office, where all records, books, models, drawings, specifications, and other papers and things pertaining to patents shall be safely kept and preserved.

The Patent Office was transferred from the Department of the Interior to the Department of Commerce by Executive Order No. 4175, signed March 17,

1925, effective April 1, 1925, in accordance with the authority contained in the act of February 14, 1903, establishing the Department of Commerce (sec. 12, 32 Stat. 830). Some sections of the present law still refer to the Department of the Interior.

**Note**

(1) The word "all" is omitted since some old records are kept in the National Archives, see 44 U. S. C: Chapter 8A.

(2) 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."

(3) 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 and its functions and duties, and relates to trade-marks as well as patents. This is explicitly brought out in some of the corresponding sections of the present chapter.

**§ 2. Seal**

1 The seal provided for the Patent Office before July 8, 1870 is the  
 2 seal of the Office, with which letters patent, certificates of trade-  
 3 mark registrations, and papers issued from the Office shall be au-  
 4 thenticated.

**Present statute**

Sec. 478, Revised Statutes of 1874 [35 U. S. C. 3]:

The seal heretofore provided for the Patent-Office shall be the seal of the Office, with which letters-patent and papers issued from the Office shall be authenticated.

**Note**

"Certificates of trade-mark registrations" is added, see note under section 1.

**§ 3. Officers and employees**

1 A Commissioner of Patents, two assistant commissioners, and  
 2 twelve examiners-in-chief, shall be appointed by the President, by  
 3 and with the advice and consent of the Senate. The assistant  
 4 commissioners shall perform the duties pertaining to the office of  
 5 commissioner assigned to them by the Commissioner. The ex-  
 6 aminers-in-chief shall serve as members of the Board of Appeals  
 7 and may perform duties of a comparable nature pertaining to the  
 8 office of commissioner assigned to them by the Commissioner. The  
 9 assistant commissioner, senior in appointment, shall fill the office of  
 10 Commissioner of Patents during a vacancy in that office until a  
 11 Commissioner of Patents is appointed and takes office. All other  
 12 officers, clerks, and employees authorized by law for the office shall  
 13 be appointed by the Secretary of Commerce upon the nomination  
 14 of the Commissioner of Patents in accordance with law.

**Present statute**

Sec. 476, Revised Statutes of 1874, amended (1) Feb. 15, 1916, sec. 1, ch. 22, 39 Stat. 8, (2) Feb. 14, 1927, sec. 1, ch. 139, 44 Stat. 1098, (3) Apr. 11, 1930, sec. 1, ch. 132, 46 Stat. 155 [35 U. S. C. 2]:

There shall be in the Patent Office a Commissioner of Patents, one first assistant commissioner, two assistant commissioners, and nine examiners in chief, who shall be appointed by the President, by and with the advice and consent of the Senate. The first assistant commissioner and the assistant commissioners shall perform such duties pertaining to the office of commissioner as may be assigned to them, respectively, from time to time by the Commissioner of Patents. All other officers, clerks, and employees authorized by law for the office shall be appointed by the Secretary of Commerce upon the nomination of the Commissioner of Patents, in accordance with existing law.

**Note**

(1) The revision of this section, increasing the number of examiners-in-chief from nine to twelve and eliminating an assistant commissioner, proposed by the bill, S. 2328, 81st Congress, which has passed the Senate, is followed.

(2) The temporary designation of an assistant commissioner as commissioner is added. This is essential to eliminate complications resulting from a vacancy in office, present applicable general statutes (5 U. S. C. 7) permitting a vacancy to be temporarily filled for not more than 30 days.

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

- 1 All officers and employees of the Patent Office shall be incapable,
- 2 during the period for which they hold their appointments and one
- 3 year thereafter, of applying for a patent and of acquiring, except by
- 4 inheritance or bequest, any patent or any right or interest in any
- 5 patent, issued or to be issued by the Office.

**Present statute**

Sec. 480, Revised Statutes of 1874 [35 U. S. C. 4]:

All officers and employees of the Patent-Office shall be incapable, during the period for which they hold their appointments, to acquire or take, directly or indirectly, except by inheritance or bequest, any right or interest in any patent issued by the Office.

**Note**

(1) The language is revised and inability to apply for a patent, included in the original language, is made explicit.

(2) The period of disability is increased to include one year after leaving the Office.

**§ 5. Bond of commissioner and other officers**

- 1 The Commissioner of Patents and such other officers as he desig-
- 2 nates, before entering upon their duties, shall severally give bond,
- 3 with sureties, the former in the sum of \$25,000, and the latter in
- 4 sums prescribed by the Commissioner, conditioned for the faithful
- 5 discharge of their respective duties, and that they shall render to
- 6 the proper officers of the Treasury a true account of all money
- 7 received by virtue of their offices.

**Present statute**

Sec. 479, Revised Statutes of 1874 [35 U. S. C. 5]:

The Commissioner of Patents and the chief clerk, before entering upon their duties, shall severally give bond, with sureties, to the Treasurer of the United States, the former in the sum of ten thousand dollars, and the latter in the sum of five thousand dollars, 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.

**Notes**

(1) Specific mention of the office of chief clerk is omitted, the officers requiring bonds, and the amounts of the bonds, to be designated by the Commissioner.

(2) The amount of the bond of the Commissioner is changed.

**§ 6. Duties of commissioner**

1 The Commissioner of Patents, under the direction of the Secretary  
 2 of Commerce, shall superintend or perform all duties respecting the  
 3 granting and issuing of patents directed by law; and he shall have  
 4 charge of things belonging to the Patent Office. He may, subject to the  
 5 approval of the Secretary of Commerce, from time to time establish  
 6 rules and regulations, not inconsistent with law, for the conduct of  
 7 proceedings in the Patent Office.

**Present statute**

Sec. 481, Revised Statutes of 1874 [35 U. S. C. 6]:

The Commissioner of Patents, under the direction of the Secretary of the Interior [Commerce], shall superintend or perform all duties respecting the granting and issuing of patents directed by law; and he shall have charge of all books, records, papers, models, machines, and other things belonging to the Patent Office.

Sec. 483, Revised Statutes of 1874 [35 U. S. C. 6]:

The Commissioner of Patents, subject to the approval of the Secretary of the Interior [Commerce], may from time to time establish regulations, not inconsistent with law, for the conduct of proceedings in the Patent Office.

**Note**

The two sections are combined into one with some changes in language.

**§ 7. Board of Appeals**

1 The examiners-in-chief shall be persons of competent legal knowl-  
 2 edge and scientific ability. The Commissioner of Patents, the  
 3 assistant commissioners, and the examiners-in-chief shall constitute  
 4 a board of appeals, which, on written petition of the appellant, shall  
 5 review and determine the validity of the adverse decisions of ex-  
 6 aminers upon applications for patents and for reissues of patents.  
 7 Each appeal shall be heard by at least three members of the Board  
 8 of Appeals, the members hearing such appeal to be designated by  
 9 the Commissioner. The Board of Appeals has sole power to grant  
 10 rehearings.

**Present statute**

Sec. 482, Revised Statutes of 1874, amended (1) Mar. 2, 1927, sec. 3, ch. 273, 44 Stat. 1335, (2) Apr. 11, 1930, sec. 2, ch. 132, 46 Stat. 155 [35 U. S. C. 7]:

The examiners in chief shall be persons of competent legal knowledge and scientific ability. The Commissioner of Patents, the first assistant commissioner, the assistant commissioners, and the examiners in chief shall constitute a board of appeals, whose duty it shall be, on written petition of the appellant, to review and determine upon the validity of the adverse decisions of examiners upon applications for patents and for reissues of patents and in interference cases. 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 shall have sole power to grant rehearings.

**Note**

Some change in language has been made and the reference to interferences which are no longer considered by the Board of Appeals, has been deleted.

**§ 8. Library**

- 1 A library of scientific and other works and periodicals, both foreign
- 2 and domestic, shall be maintained in the Patent Office to aid the
- 3 officers in the discharge of their duties.

**Present statute**

Sec. 486, Revised Statutes of 1874 [35 U. S. C. 10]:

There shall be purchased for the use of the Patent-Office a library of such scientific works and periodicals, both foreign and American, as may aid the officers in the discharge of their duties, not exceeding the amount annually appropriated for that purpose.

**Note**

Some change in language has been made. "Purchased" is changed to "maintained" to include the existing library and keeping it up by additions. The phrase "and other" is added to include legal works. The last phrase is omitted as unnecessary.

**§ 9. Classification of patents**

- 1 The Commissioner of Patents may revise and perfect, and main-
- 2 tain, the classification by subject matter of United States letters
- 3 patent, and such other patents and printed publications as may be
- 4 necessary or practicable, for the purpose of determining with more
- 5 readiness and accuracy the novelty of inventions for which applica-
- 6 tions for patent are filed.

**Present statute**

Sec. 1, Act of June 10, 1898, ch. 430, 30 Stat. 440 [35 U. S. C. 6 note]:

That for the purpose of determining with more readiness and accuracy the novelty of inventions for which applications for letters patent are or may be filed in the United States Patent Office, and to prevent the issuance of letters patent of the United States for inventions which are not new, the Commissioner of Patents is hereby authorized and directed to revise and perfect the classification, by subjects-matter, of all letters patent and printed publications in the United States Patent Office which constitute the field of search in the examination

as to the novelty of invention for which applications for patents are or may be filed.

**Note**

Changes in language are made, but no change in the actual practice in the Patent Office.

**§ 10. Certified copies of records**

- 1 The Commissioner may furnish certified copies of specifications and
- 2 drawings of patents issued by the Patent Office, and of other records
- 3 available to the public or to the person applying, upon payment of
- 4 the rates for uncertified copies and the fee for each certification.

**Present statute**

Sec. 1 (part), appropriation act of Mar. 3, 1891, ch. 541, 26 Stat. 908, 940 [35 U. S. C. 14]:

And certified copies of such drawings and specifications may be furnished by the Commissioner of Patents to persons applying therefor upon payment of the present rates for uncertified copies, and twenty-five cents additional for each certification.

**Note**

Reference to other records is added. The fee for certification is omitted as it appears in the table of fees.

**§ 11. Disposition of old records**

- 1 The Commissioner of Patents may destroy or otherwise dispose of
- 2 the files and papers of abandoned applications which have been on
- 3 file for more than 20 years.

**Present statute**

Sec. 6, Act of Apr. 11, 1930, ch. 132, 46 Stat. 156 [35 U. S. C. 23]:

The Commissioner of Patents is authorized to annually destroy or otherwise dispose of all the files and papers belonging to all abandoned applications which have been on file for more than twenty years.

**Note**

Language has been changed.

**§ 12. Publications**

- 1 The Commissioner of Patents may print, or cause to be printed,
- 2 the following:
  - 3 (a) Patents for inventions and designs, including specifications and
  - 4 drawings, together with copies of the same. The headings of the
  - 5 drawings for patents may be multigraphed in the Patent Office for
  - 6 the purpose of photolithography.
  - 7 (b) Certificates of trade-mark registrations, including statements
  - 8 and drawings, together with copies of the same.

- 9 (c) The Official Gazette of the United States Patent Office, copies  
 10 of which, and of the following publications, may be exchanged for  
 11 publications desirable for the use of the Patent Office.
- 12 (d) Annual indexes of patents and patentees, and of trade-marks  
 13 and registrants.
- 14 (e) Annual volumes of decisions of the Commissioner of Patents  
 15 and of the United States courts in patent and trade-mark cases.
- 16 (f) Pamphlet copies of the patent laws and rules of practice, laws  
 17 and rules relating to trade-marks, and circulars or other publications  
 18 relating to the business of the Office.

#### Present statute

Sec. 489, Revised Statutes of 1874 [35 U. S. C. 13]:

The Commissioner of Patents may print, or cause to be printed, copies of the claims of current issues, and copies of such laws, decisions, regulations, and circulars as may be necessary for the information of the public.

Sec. 301 (part), appropriation act of July 9, 1947, ch. 211, 61 Stat. 299, repeated in prior and subsequent appropriation acts [35 U. S. C. 16]:

Headings of the drawings for patented cases may be multigraphed in the Patent Office for the purpose of photolithography.

#### Note

Sec. 489 R. S. is amplified to include the substance of 44 U. S. C. 283 and to incorporate the provision appearing in the appropriation acts.

#### § 13. Exchange of copies of patents with foreign countries

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

#### Present statute

Act of Jan. 14, 1915, 38 Stat. 1221 [35 U. S. C. 15]:

That the Commissioner of Patents of the United States be, and he is hereby, authorized to exchange with the Dominion of Canada, under such terms of contract as may by him be deemed practicable, printed copies of patents now in the United States Patent Office and hereafter issued by the United States.

Sec. 9, proviso in, Act of Feb. 18, 1922, ch. 58, 42 Stat. 393 [35 U. S. C. 78, part]:

The Commissioner of Patents may exchange copies of United States patents for those of foreign countries.

#### Note

The first act applies to Canada only, the second to any country; these are consolidated in one section and specific reference to one country is not necessary.

#### § 14. Copies of patents for public libraries

- 1 The Commissioner of Patents may supply printed copies of  
 2 specifications and drawings of patents to public libraries in the  
 3 United States which he may approve and which shall maintain  
 4 such copies for the use of the public, at the rate for each year's  
 5 issue established for this purpose.

**Present statute**

Proviso in sec. 4934 of the Revised Statutes introduced by Act of February 18, 1922, sec. 9, ch. 58, 42 Stat. 389, 393 [35 U. S. C. 78]:

*Provided*, That the Commissioner of Patents may supply public libraries of the United States with such copies as published, for \$50 per annum.

**Note**

The proviso now in the schedule of fees is made a separate section and the language is changed to incorporate the object of S. 1739, 81st Congress, passed by the Senate.

**§ 15. Printing of papers filed**

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

**Present statute**

Sec. 488, Revised Statutes of 1874 [35 U. S. C. 12]:

The Commissioner of Patents may require all papers filed in the Patent-Office, if not correctly, legibly, and clearly written, to be printed at the cost of the party filing them.

**Note**

- (1) Language is changed and "or typewritten" is added after "printed."

**§ 16. Annual report to Congress**

- 1 The Commissioner of Patents shall lay before Congress annually
- 2 a report giving a statement of moneys received and expended,
- 3 statistics concerning the work of the Office, and such other informa-
- 4 tion of the condition of the Office as may be useful to Congress or the
- 5 public.

**Present statute**

Sec. 494, Revised Statutes of 1874 [35 U. S. C. 20]:

The Commissioner of Patents shall lay before Congress, in the month of January, annually, a report, giving a detailed statement of all moneys received for patents, for copies of records or drawings, or from any other source whatever; a detailed statement of all expenditures for contingent and miscellaneous expenses; a list of all patents which were granted during the preceding year, designating under proper heads the subjects of such patents; an alphabetical list of all the patentees, with their places of residence; a list of all patents which have been extended during the year; and such other information of the condition of the Patent Office as may be useful to Congress or the public.

**Note**

The section has been shortened. The lists referred to, and which are omitted from the revised section, are the indexes provided for in section 12 (d). The month is omitted. The report contemplated by Sec. 494 has been discontinued since 1925 under authority of 44 U. S. C. 212.

**§ 17. Day for taking action falling on Sunday or holiday**

- 1 Where the day, or the last day, for taking any action or paying
- 2 any fee in the United States Patent Office falls on Sunday, or on a

- 3 holiday within the District of Columbia, the action may be taken,  
4 or the fee paid, on the next succeeding secular or business day.

**Present statute**

Sec. 14, Act of Mar. 2, 1927, ch. 273, 44 Stat. 1337 [35 U. S. C. 21]:

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

**Note**

"Fixed by statute" is omitted as unnecessary.

**§ 18. Agents and attorneys, rules and regulations for**

- 1 The Commissioner of Patents, subject to the approval of the  
2 Secretary of Commerce, may prescribe rules and regulations governing  
3 the recognition of agents, attorneys, or other persons representing  
4 applicants or other parties before the Patent Office, and may require  
5 them, before being recognized as representatives of applicants or  
6 other persons, to show that they are of good moral character and  
7 reputation, are possessed of the necessary qualifications to render to  
8 applicants or other persons valuable service, and to advise and assist  
9 applicants or other persons in the presentation or prosecution of their  
10 applications or other business before the Office.

**Present statute**

See after section 19.

**§ 19. Agents and attorneys, suspension or exclusion from  
practice**

- 1 The Commissioner of Patents may, after notice and opportunity  
2 for a hearing, suspend or exclude, either generally or in any particular  
3 case, from further practice before the Patent Office any person,  
4 agent, or attorney shown to be incompetent or disreputable, or guilty  
5 of gross misconduct, or who refuses to comply with the rules and  
6 regulations established under section 18 of this title, or who shall,  
7 with intent to defraud in any manner, deceive, mislead, or threaten  
8 any applicant or prospective applicant, or other person having im-  
9 mediate or prospective business before the Office. The reasons for  
10 any such suspension or exclusion shall be duly recorded. The action  
11 of the Commissioner may be reviewed upon the petition of the  
12 person so refused recognition or so suspended or excluded by the  
13 United States District Court for the District of Columbia under  
14 such conditions and upon such proceedings as the said court may  
15 by its rules determine.

**Present statute**

Sec. 487, Revised Statutes of 1874, amended Feb. 18, 1922, sec. 3, ch. 58, 42 Stat. 390 [35 U. S. C. 11]:

The Commissioner of Patents, subject to the approval of the Secretary of Commerce, may prescribe rules and regulations governing the recognition of agents, attorneys, or other persons representing applicants or other parties before his office, and may require of such persons, agents, or attorneys, before being recognized as representatives of applicants or other persons, that they shall show that they are of good moral character and in good repute, are possessed of the necessary qualifications to enable them to render to applicants or other persons valuable service, and are likewise competent to advise and assist applicants or other persons in the presentation or prosecution of their applications or other business before the Office. The Commissioner of Patents may, after notice and opportunity for a hearing, suspend or exclude, either generally or in any particular case, from further practice before his office any person, agent, or attorney shown to be incompetent or disreputable, or guilty of gross misconduct, or who refuses to comply with the said rules and regulations, or who shall, 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, by word, circular, letter, or by advertising. The reasons for any such suspension or exclusion shall be duly recorded. The action of the commissioner may be reviewed upon the petition of the person so refused recognition or so suspended or excluded by the district court of the United States for the District of Columbia under such conditions and upon such proceedings as the said court may by its rules determine.

**Note**

The present statute is divided into two sections and, in the second section, the phrase, "by word, circular, letter, or by advertising", is omitted as unnecessary and as subject to misinterpretation.

**§ 20. Patent agents and attorneys, unauthorized representation as practitioner**

- 1   Whoever, not being recognized to practice, or having withdrawn or
- 2   been disbarred or excluded from practice, before the Patent Office,
- 3   holds himself out or permits himself to be held out as authorized to
- 4   represent applicants for patent in their business before the Patent
- 5   Office, shall be fined not more than \$500.

**Present statute**

Act of May 9, 1938, ch. 188, 52 Stat. 342 [35 U. S. C. 11a]:

It shall be unlawful for any person who has not been duly recognized to practice before the United States Patent Office in accordance with the provisions of section 487 of the Revised Statutes and the rules of the Patent Office to hold himself out or knowingly permit himself to be held out as a patent solicitor, patent agent, or patent attorney, or otherwise in any manner hold himself out, either directly or indirectly, as authorized to represent applicants for patent in their business before the Patent Office, and it shall be unlawful for any person who has, under the authority of section 487 of the Revised Statutes been disbarred or excluded from practice before the Patent Office, and has not been reinstated, to hold himself out in any manner whatever as entitled to represent or assist persons in the transaction of business before the Patent Office or any division thereof; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine of not less than \$50 and not exceeding \$500.

**Note**

The language has been simplified.

## CHAPTER 2. PATENTABILITY OF INVENTIONS

Sec.

21. Inventions patentable.
22. Conditions for patentability; novelty and loss of right to patent.
23. Conditions for patentability; lack of invention.
24. Undisclosed prior knowledge or use.
25. Limitation on proof of date of invention.
26. Invention made abroad.

### § 21. Inventions patentable

1 Any person who has invented or discovered any new and useful  
2 art, machine, manufacture, or composition of matter, or any new  
3 and useful improvement thereof, may obtain a patent therefor upon  
4 making application for a patent, subject to the conditions and require-  
5 ments of this title.

6 Discoveries, as well as inventions, may be patented, if the discovery  
7 can be expressed in terms of or embodied in a new and useful art,  
8 machine, manufacture or composition of matter, or improvement  
9 thereof, and the term invention when used in this title includes such  
10 discovery.

#### Present statute

Sec. 4886, Revised Statutes of 1874, amended (1) Mar. 3, 1897, sec. 1, ch. 391, 29 Stat. 692, (2) May 23, 1930, sec. 1, ch. 312, 46 Stat. 376, (3) Aug. 5, 1939, sec. 1, ch. 450, 53 Stat. 1212 [35 U. S. C. 31]:

Any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvements thereof, or who has invented or discovered and asexually reproduced any distinct and new variety of plant, other than a tuber-propagated plant, not known or used by others in this country, before his invention or discovery thereof, and not patented or described in any printed publication in this or any foreign country, before his invention or discovery thereof, or more than one year prior to his application, and not in public use or on sale in this country for more than one year prior to his application, unless the same is proved to have been abandoned, may, upon payment of the fees required by law, and other due proceeding had, obtain a patent therefor.

#### Note

(1) Sec. 4886 is split into two sections, section 21 relating to the subject matter for which patents may be obtained, and section 22 relating to the conditions under which a patent may be obtained.

(2) The first paragraph of section 21 follows the exact wording of R. S. 4886 as to the subject matter for patents, except that reference to plant patents has been omitted for incorporation in section 89.

(3) The second paragraph of section 21 is added to emphasize the fact that discoveries can be patented in certain instances, and to lay a basis for avoiding

the phrase "invention or discovery" and the like throughout the remainder of the act.

**§ 22. Conditions for patentability. Novelty and loss of right to patent**

- 1 An invention shall not be considered new or capable of being
- 2 patented if
- 3 (a) the invention was known or used by others in this country, or
- 4 patented or described in any printed publication in this or any for-
- 5 eign country, before the invention thereof by the applicant for patent,
- 6 or if
- 7 (b) the invention was patented or described in any printed pub-
- 8 lication in this or any foreign country or in public use or on public
- 9 sale in this country, more than one year prior to the date of the appli-
- 10 cation for patent in the United States, or if
- 11 (c) the intention is proved to have been abandoned, or if
- 12 (d) the invention was first patented or caused to be patented by
- 13 the inventor or his legal representatives or assigns in a foreign country
- 14 prior to the date of the application for patent in this country.

**Present statute**

Sec. 4886, Revised Statutes of 1874; text is given following section 21.

Sec. 4887 (first paragraph), Revised Statutes of 1874, amended (1) Mar. 3, 1897, sec. 3, ch. 391, 29 Stat. 692, 693, (2) Mar. 3, 1903, sec. 1, ch. 1019, 32 Stat. 1225, 1226, (3) June 19, 1936, ch. 594, 49 Stat. 1529 [35 U. S. C. 32]:

No person otherwise entitled thereto shall be debarred from receiving a patent for his invention or discovery, nor shall any patent be declared invalid by reason of its having been first patented or caused to be patented by the inventor or his legal representatives or assigns in a foreign country, unless the application for said foreign patent was filed more than twelve months, in cases within the provisions of section 4886 of the Revised Statutes, and six months in cases of designs, prior to the filing of the application in this country, in which case no patent shall be granted in this country.

**Note**

(1) The conditions for patentability are paragraphed and lettered. Paragraphs (a), (b) and (c) are the same as the corresponding provisions in R. S. 4886, but the first clause of paragraph (a) is qualified by Section 24 and "public" has been inserted before sale in paragraph (b).

(2) Paragraph (d) is a revision of the first paragraph of R. S. 4887. Substantive changes are introduced, see H. R. 9388, 76th Congress, hearings May 1940, and H. R. 1178, 79th Congress.

**§ 23. Conditions for patentability, lack of invention**

- 1 A patent may not be obtained though the invention is not identi-
- 2 cally disclosed or described in the material specified in section 22 of
- 3 this title, if the differences between the subject matter sought to be
- 4 patented and said material are such that the subject matter as a
- 5 whole would be obvious to an ordinary person skilled in the art.

6 Patentability as to this condition shall be determined by the nature  
7 of the contribution to the advancement of the art, and not by the  
8 nature of the mental processes by which such contribution may have  
9 been accomplished.

#### Note

There is no provision corresponding to the first paragraph explicitly stated in the present statutes, but the refusal of patents by the Patent Office, and the holding of patents invalid by the courts, on the ground of lack of invention has been followed since at least as early as 1850. This paragraph is added for two reasons, first, a specific statement in the statute might have some stabilizing effect, and second, it serves as a basis for the addition of a provision defining or setting a standard of invention if such addition were considered desirable or necessary.

The second paragraph brings up recent proposals relating to an objective standard of invention, see 79th Congress, H. R. 3694; 80th Congress, H. R. 4061 and 5428, hearings, May 1948; 81st Congress, H. R. 4798, hearings, June, 1949.

#### § 24. Undisclosed prior knowledge or use

- 1 Whenever it appears that an applicant for patent, at the time of  
2 making his application, believed himself to be the original and first  
3 inventor of the thing patented, the same shall not be refused, or if  
4 granted, held to be void, solely on account of the invention having  
5 been known or used by some other person, before his invention  
6 thereof (without having been patented or described in a printed  
7 publication or in public use or on sale, as specified in section 22a  
8 and b of this title), unless
- 9 (a) it was disclosed or used in the United States by such other per-  
10 son in such manner that it had become available to the public, or  
11 described in a printed publication, before the date of the application  
12 for patent, or
- 13 (b) it was described in a patent granted on an application filed in  
14 the United States before the invention thereof by the aforementioned  
15 applicant, or
- 16 (c) it was patented in the United States.

#### Present statute

Sec. 4923, Revised Statutes of 1874 [35 U. S. C. 72]:

Whenever it appears that a patentee, at the time of making his application for the patent, believed himself to be the original and first inventor or discoverer of the thing patented, the same shall not be held to be void on account of the invention or discovery, or any part thereof, having been known or used in a foreign country, before this invention or discovery thereof, if it had not been patented or described in a printed publication.

#### Note

Section 4923 is probably wholly unnecessary in view of sections 22a and 26. The above section is practically entirely new and enacts rules announced by the

Supreme Court in *Milburn v. Davis-Bournonville*, 270 U. S. 390 and other decisions.

### § 25. Limitation on proof of date of invention

- 1 In proceedings in the Patent Office and the courts an applicant for
- 2 patent or patentee may not establish, or if established, shall not be
- 3 credited with, a date of making his invention earlier than two years
- 4 before the date of his application for patent in the United States.

#### Note

This section is new to the law and proposes a new principle of limitations with regard to questions of priority of invention. See 72d Congress, H. R. 7237, S. 3358, H. R. 10156, hearings March 1932, H. R. 11019, reported May 3, 1932, H. Report 1197, and 73d Congress, H. R. 6012.

### § 26. Invention made abroad

- 1 In proceedings in the Patent Office and in the courts, an applicant
- 2 for a patent, or a patentee, may not establish a date of invention by
- 3 reference to knowledge or use thereof, or other activity with respect
- 4 thereto, in a foreign country, other than the filing in a foreign country
- 5 of an application for a patent for the same invention which is en-
- 6 titled to have the same force and effect as if filed in the United States
- 7 on the date on which it was filed in such foreign country.

#### Present statute

Sec. 9 (part), act of Aug. 8, 1946, ch. 910, 60 Stat. 943 [35 U. S. C. 109]:

In proceedings in the Patent Office and in the courts of the United States an applicant for a patent for an invention, discovery, or a design, or a patentee, shall not be permitted to establish the date of invention or discovery by reference to knowledge or use thereof, or other activity with respect thereto, in a country foreign to the United States, other than the filing in a foreign country of an application for a patent for the same invention, discovery, or design which, in accordance with and subject to the provisions of section 4887 of the Revised Statutes, as amended, or in accordance with and subject to the provisions of this Act, is entitled to have the same force and effect as it would have had if filed in the United States on the date on which it was filed in such foreign country.

#### Note

Language has been changed.

## CHAPTER 3. APPLICATION FOR PATENT

Sec.

27. Application for patent.
28. Specification.
29. Drawings.
30. Models, specimens.
31. Oath of applicant.
32. Joint inventors.
33. Death or insanity of inventor.
34. Right of priority based on foreign application.
35. Date of continuing application.
36. Divisional applications.
37. Confidential status of applications.
38. Secrecy of certain inventions.
39. Filing evidence of invention.

### § 27. Application for patent

- 1 Application for patent shall be made in writing to the Com-  
2 missioner of Patents. Such application shall include: (1) a speci-  
3 fication as prescribed by section 28 of this title; (2) a drawing as  
4 prescribed by section 29 of this title; (3) an oath by the applicant as  
5 prescribed by section 31 of this title. The application must be  
6 signed by the applicant and accompanied by the fee required by law.

#### Present statute

Sec. 4888, Revised Statutes of 1874, amended (1) Mar. 3, 1915, sec. 1, ch. 94, 38 Stat. 958, (2) May 23, 1930, sec. 2, ch. 312, 46 Stat. 376 [35 U. S. C. 33]:

Before any inventor or discoverer shall receive a patent for his invention or discovery he shall make application therefor, in writing, to the Commissioner of Patents, and shall file in the Patent Office a written description of the same, and of the manner and process of making, constructing, compounding, and using it, in such full, clear, concise and exact terms as to enable any person skilled in the art or science to which it appertains, or with which it is most nearly connected, to make, construct, compound, and use the same; and in case of a machine, he shall explain the principle thereof, and the best mode in which he has contemplated applying that principle, so as to distinguish it from other inventions; and he shall particularly point out and distinctly claim the part, improvement, or combination which he claims as his invention or discovery. The specification and claim shall be signed by the inventor. No plant patent shall be declared invalid on the ground of noncompliance with this section if the description is made as complete as is reasonably possible.

#### Note

(1) R. S. 4888 is divided into an introductory section relating to the application generally (this section), and a section on the specification (section 28).

(2) The requirement for signature is placed in this general section so as to insure that only one signature will suffice.

**§ 28. Specification**

1 The specification shall contain a written description of the inven-  
 2 tion, and of the manner and process of making, constructing, com-  
 3 pounding, and using it, in such full, clear, concise, and exact terms  
 4 as to enable any person skilled in the art or science to which it apper-  
 5 tains, or with which it is most nearly connected, to make, construct,  
 6 compound, and use the same, and shall set forth the best mode  
 7 devised by the inventor of carrying out his invention.

8 The specification shall conclude with a claim particularly pointing  
 9 out and distinctly claiming the subject matter which the applicant  
 10 regards as his invention, determining the scope of the invention.  
 11 More than one claim may be presented.

**Present statute**

Sec. 4888, Revised Statutes of 1874, amended (1) Mar. 3, 1915, sec. 1, ch. 94, 38 Stat. 958, (2) May 23, 1930, sec. 2, ch. 312, 46 Stat. 376 [35 U. S. C. 33]. See following Sec. 27.

**Note**

(1) The sentence relating to signature of the specification is omitted in view of the general requirement for a signature in section 27.

(2) The last sentence is omitted for inclusion in the chapter relating to plant patents.

(3) The clause relating to machines is omitted as unnecessary and the requirement for the best mode of carrying out the invention is stated as generally applicable to all types of inventions (see R. S. 4921, first defense).

(4) The clause relating to the claim is made a separate paragraph and the language modified.

**§ 29. Drawings**

1 When the nature of the case admits of drawings, the applicant  
 2 shall furnish one copy signed by the inventor or his attorney in fact,  
 3 at the time of making his application.

**Present statute**

Sec. 4889, Revised Statutes of 1874, amended Mar. 3, 1915, sec. 2, ch. 94, 38 Stat. 958, 959 [35 U. S. C. 34]:

When the nature of the case admits of drawings, the applicant shall furnish one copy signed by the inventor or his attorney in fact, which shall be filed in the Patent Office; and a copy of the drawing to be furnished by the Patent Office, shall be attached to the patent as a part of the specification.

**Note**

Change in language effects no change in practice, the omitted clause is redundant.

**§ 30. Models, specimens**

1 When the nature of the case admits of representation by model,  
 2 the Commissioner may require the applicant to furnish a model of

3 convenient size to exhibit advantageously the several parts of his  
4 invention.

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

#### Present statute

Sec. 4891, Revised Statutes of 1874 [35 U. S. C. 34]:

In all cases which admit of representation by model, the applicant, if required by the Commissioner, shall furnish a model of convenient size to exhibit advantageously the several parts of his invention or discovery.

Sec. 4890, Revised Statutes of 1874 [35 U. S. C. 34]:

When the invention or discovery is of a composition of matter, the applicant, if required by the Commissioner, shall furnish specimens of ingredients and of the composition, sufficient in quantity for the purpose of experiment.

#### Note

(1) The two old sections are combined in one section.

(2) The change in language in the second paragraph broadens the requirement.

### § 31. Oath of applicant

1 The applicant shall make oath that he believes himself to be the  
2 original and first inventor of the art, machine, manufacture, com-  
3 position, or improvement, for which he solicits a patent and that  
4 he does not know and does not believe that the same was ever before  
5 known or used; and shall state of what country he is a citizen.  
6 Such oath may be made before any person within the United States  
7 authorized by law to administer oaths, or, when made in a foreign  
8 country, before any diplomatic or consular officer of the United  
9 States authorized to administer oaths, or before any notary public,  
10 judge, or magistrate having an official seal and authorized to ad-  
11 minister oaths in the foreign country in which the applicant may be,  
12 whose authority shall be proved by certificate of a diplomatic or  
13 consular officer of the United States, and shall be valid if it complies  
14 with the laws of the state or country where made.

15 The Commissioner of Patents may require the submission under  
16 oath of statements of facts relevant to the patentability of the  
17 invention or to the examination or other proceedings in the Patent  
18 Office.

#### Present statute

Sec. 4892, Revised Statutes of 1874, amended (1) Mar. 3, 1903, sec. 2, ch. 1019, 32 Stat. 1225, 1226, (2) May 23, 1930, sec. 3, ch. 312, 46 Stat. 376 [35 U. S. C. 35]:

The applicant shall make oath that he does verily believe himself to be the original and first inventor or discoverer of the art, machine, manufacture, composition, or improvement, or of the variety of plant, for which he solicits a patent; that he does not know and does not believe that the same was ever before known

or used; 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 the applicant resides in a foreign country, before any minister, charge d'affaires, or consul holding commission under the Government of the United States, or before any notary public, judge, or magistrate having any 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.

**Note**

(1) The expression at the end of the first paragraph is added to avoid application of the District of Columbia law to oaths taken outside the District.

(2) A paragraph is added to bring out the fact that the Commissioner requires and may require other statements under oath.

**§ 32. Joint inventors**

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

4 If one of the joint inventors refuses to join in the application for  
5 patent or his whereabouts cannot be ascertained after diligent inquiry,  
6 the application may be made by the other inventor on behalf of him-  
7 self and the first mentioned inventor, and a patent may be granted  
8 to the inventor making the application or his assigns, on proof satis-  
9 factory to the Commissioner and notification to the joint inventor  
10 who may have refused to join, the patent to be held in trust as to the  
11 interest of the omitted inventor. The omitted inventor may join  
12 in the application when found, and the Commissioner may refuse to  
13 grant a patent unless any dispute between the joint inventors is  
14 settled and the omitted inventor joins in the application.

15 Whenever a person was joined in an application for patent as joint  
16 inventor by error, or a joint inventor was not included in an applica-  
17 tion by error, and such error arose through inadvertence or mistake  
18 and without any fraudulent or deceptive intention, the Commissioner  
19 may permit the application to be amended, under such terms and  
20 conditions as he may prescribe.

**Note**

The first paragraph represents present law, and the part of the last paragraph relating to omission of an erroneously joined inventor is in the Patent Office rules. The remainder is new. This section is ancillary to Section 63.

**§ 33. Death or insanity of inventor**

1 When any person who has made an invention for which a patent  
2 may be granted dies before applying for a patent, his executor or  
3 administrator may apply for and obtain the patent, in trust for the  
4 heirs at law of the deceased, in case he shall have died intestate, or if  
5 he shall have left a will disposing of the same, then in trust for the  
6 beneficiaries entitled thereto, on the same terms and conditions

7 applicable to the inventor. If there be neither executor nor adminis-  
8 trator, then the application may be made by the heirs of the deceased  
9 inventor.

10 When any person who has made an invention for which a patent  
11 may be granted becomes insane before applying for a patent, his  
12 legally appointed guardian, conservator, or representative may apply  
13 for and obtain the patent, in trust for his estate, on the same terms  
14 and conditions applicable to the inventor.

15 Proof of the authority of the person applying in place of the  
16 inventor shall be filed (in the case of a foreign executor or adminis-  
17 trator or other above authorized representative, such authority to  
18 be proved by certificate of a diplomatic or consular officer of the  
19 United States), and the oath or affirmation required to be made  
20 shall be so varied in form that it can be made by him.

#### Present statute

Sec. 4896, Revised Statutes of 1874, amended (1) Feb. 28, 1899, ch. 227, 30 Stat. 915, (2) Mar. 3, 1903, sec. 3, ch. 1019, 32 Stat. 1225, 1226-7, (3) May 23, 1908, ch. 188, 35 Stat. 245 [35 U. S. C. 46]:

When any person, having made any new invention or discovery for which a patent might have been granted, dies before a patent is granted the right of applying for and obtaining the patent shall devolve on his executor or administrator, in trust for the heirs at law of the deceased, in case he shall have died intestate; or if he shall have left a will disposing of the same, then in trust for his devisees in as full manner and on the same terms and conditions as the same might have been claimed or enjoyed by him in his lifetime; and when any person having made any new invention or discovery for which a patent might have been granted becomes insane before a patent is granted the right of applying for and obtaining the patent shall devolve on his legally appointed guardian, conservator, or representative in trust for his estate in as full manner and on the same terms and conditions as the same might have been claimed or enjoyed by him while sane; and when the application is made by such legal representatives the oath or affirmation required to be made shall be so varied in form that it can be made by them. The executor or administrator duly authorized under the law of any foreign country to administer upon the estate of the deceased inventor shall, in case the said inventor was not domiciled in the United States at the time of his death, have the right to apply for and obtain the patent. The authority of such foreign executor or administrator shall be proved by certificate of a diplomatic or consular officer of the United States.

The foregoing section, as to insane persons, is to cover all applications now on file in the Patent Office or which may be hereafter made.

#### Note

(1) Some changes in language are made and the various provisions of the original statute are rearranged and restricted to death or insanity before applying for patent.

(2) A provision relating to heirs is added.

#### § 34. Right of priority based on foreign application

1 An application for patent for an invention filed in this country by  
2 any person who has, or whose legal representatives or assigns have,  
3 previously regularly filed an application for a patent for the same

4 invention in a foreign country which, by treaty, convention, or law,  
5 affords similar privileges in the case of applications filed in the  
6 United States or to citizens of the United States, shall have the same  
7 force and effect as the same application would have if filed in this  
8 country on the date on which the application for patent for the same  
9 invention was first filed in such foreign country, provided the applica-  
10 tion in this country is filed within twelve months from the earliest  
11 date on which any such foreign application was filed. But no patent  
12 shall be granted on any application for patent for an invention which  
13 had been patented or described in a printed publication in this or  
14 any foreign country more than one year before the date of the actual  
15 filing of the application in this country, or which had been in public  
16 use or on sale in this country for more than one year prior to such  
17 filing.

18 No application or patent shall be entitled to the right of priority  
19 based on a foreign application as provided for by the preceding para-  
20 graph unless a claim for such right of priority and a copy of the origi-  
21 nal foreign application (with the specification and drawings if any)  
22 upon which it is based, certified as correct by the patent office of the  
23 country in which filed (which certificate shall also show the date of  
24 the application and of the filing of the specification and other papers  
25 if different therefrom), are filed in the Patent Office before the patent  
26 is granted, or before such time during the pendency of the application,  
27 not earlier than six months after the filing of the application in this  
28 country, as may be required by the Commissioner. The Commis-  
29 sioner may require a translation of the papers filed if not in the  
30 English language and such other information as he may deem  
31 necessary.

#### Present statute

Sec. 4887, second paragraph, Revised Statutes of 1874, amended (1) Mar. 3, 1903, sec. 1, ch. 1019, 32 Stat. 1225, 1226, (2) June 19, 1936, ch. 594, 49 Stat. 1529, (3) Aug. 5, 1939, sec. 1, ch. 450, 53 Stat. 1212 [35 U. S. C. 32]:

An application for patent for an invention or discovery or for a design filed in this country by any person who has previously regularly filed an application for a patent for the same invention, discovery, or design in a foreign country which, by treaty, convention, or law, affords similar privileges to citizens of the United States shall have the same force and 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, discovery, or design was first filed in such foreign country: *Provided*, That the application in this country is filed within twelve months in cases within the provisions of section 4886 of the Revised Statutes, and within six months in cases of designs, from the earliest date on which any such foreign application was filed. But no patent shall be granted on any application for patent for an invention or discovery or a design which had been patented or described in a printed publication in this or any foreign 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 for more than one year prior to such filing.

**Note**

(1) The first paragraph is the same as the present law with changes in language. The references to designs have been removed for inclusion in another section and the opening clause has been modified to accord with actual practice and the requirements of the International Convention for the Protection of Industrial Property.

(2) A paragraph is added making an additional requirement for obtaining the right of priority.

**§ 35. Date of continuing application**

1 An application for patent for an invention disclosed in the manner  
2 required by section 28 of this title in an application previously filed  
3 in the United States by the same inventor shall have the same effect  
4 as though filed on the date of the prior application, if the later  
5 application is filed before the prior application is patented or aban-  
6 doned, or proceedings thereon terminated, and if the applicant claims  
7 the benefit of the filing date of the prior application in said later  
8 application. The term of the patent granted on said later application  
9 shall not extend beyond the date of expiration of the patent if any,  
10 which may be granted on the earlier application.

**Note**

This section represents present law except for two added conditions, the requirement that the benefit of the first application must be claimed in the second, and the curtailment of the term of the patent granted on the second application when it issues later than a patent on the first application.

**§ 36. Divisional applications**

1 If two or more independent or distinct inventions are claimed in  
2 one application, the Commissioner may in his discretion require the  
3 application to be restricted to one of the inventions; and the other  
4 invention or inventions may be made the subject of one or more  
5 divisional applications. A divisional application shall be entitled to  
6 the benefit of the filing date of the original application if it complies  
7 with the requirements of section 35 of this title, and in such event  
8 shall also be subject to the restriction in term specified in section 35  
9 of this title. If two or more patents are issued in consequence of a  
10 requirement for restriction under this section, no claim of any of  
11 said patents may be held invalid solely by reason of its inclusion in  
12 a separate patent. If a divisional application is directed solely to  
13 subject matter described and claimed in the original application  
14 as filed, signing and execution by the inventor may be dispensed with.

**Note**

This section enacts the law with respect to division, at the same time introducing a number of changes. Division is made discretionary with the Commissioner, hence there will be no appeal to the court. The requirements and

restrictions of section 35 are made applicable. Neither of the resulting patents can be held invalid over the other merely because of their being divided in several patents. In some cases a divisional application may be filed by the assignee, incorporating to a limited extent prior legislative proposals: 72d Congress, S. 3358, H. R. 7237, H. R. 10152, hearings March 1932, H. R. 11018, reported May 3, 1932, H. Report 1202; 73d Congress, H. R. 6011; 76th Congress, H. R. 8444 and H. R. 9386, hearings May 1940; 77th Congress, H. R. 3212.

### § 37. Confidential status of applications

- 1 Applications for patents shall be kept in confidence by the Patent
- 2 Office and no information concerning the same given without author-
- 3 ity of the applicant or owner unless necessary to carry out the pro-
- 4 visions of this or any other law or in such special circumstances as
- 5 may be determined by the Commissioner.
- 6 Pending applications for patents may be printed and published
- 7 by the Commissioner, at the request and at the expense of the appli-
- 8 cant or owner. When so published, such applications shall have the
- 9 same effect as an issued patent for the purposes of section 24 of this
- 10 title.

#### Note

The first paragraph enacts the Patent Office rule of secrecy of applications. The second paragraph is new.

### § 38. Secrecy of certain inventions

- 1 (a) Whenever the publication or disclosure of an invention by the
- 2 granting of a patent, within categories prescribed by the President
- 3 might, in the opinion of the Commissioner of Patents, be detrimental
- 4 to the national security, he shall make the application for patent in
- 5 which such invention is disclosed available for inspection to the
- 6 Atomic Energy Commission, the Secretary of the Army, the Secre-
- 7 tary of the Navy, the Secretary of the Air Force, and the chief
- 8 officer of any other department or agency of the Government desig-
- 9 nated by the President as a defense agency of the United States. If
- 10 in the opinion of such department or agency, the publication or
- 11 disclosure of such invention by the granting of a patent therefor
- 12 would be detrimental to the national security, the Commissioner of
- 13 Patents, upon being so notified, shall order that such invention be
- 14 kept secret and shall withhold the grant of a patent therefor for such
- 15 period or periods as the national interest requires. The owner of a
- 16 patent application which has been placed under such a secrecy order
- 17 shall have a right to appeal from such order to such department or
- 18 agency and under such rules as may be prescribed by the President.
- 19 No invention shall be ordered kept secret and the grant of a patent

20 withheld for a period of more than one year in any one order but the  
21 Commissioner of Patents shall renew any such order at the end there-  
22 of, or at the end of any renewal period, for additional periods of one  
23 year upon notification by the head of the department or the chief  
24 officer of the agency who caused the order to be issued that an  
25 affirmative determination has been made that the national interest  
26 continues so to require, excepting, however, that any such order in  
27 effect, or issued, during a time when the United States is at war,  
28 shall be and remain in effect for the duration of the war unless sooner  
29 specifically rescinded. The Commissioner of Patents is authorized  
30 to rescind any order upon notification by the heads of all departments  
31 and the chief officers of all agencies who caused the order to be issued  
32 that the publication or disclosure of the invention is no longer  
33 deemed to be detrimental to the national security.

34 (b) The invention disclosed in an application for patent subject  
35 to an order made pursuant to paragraph (a) hereof shall be held  
36 abandoned upon its being established before or by the Commissioner  
37 of Patents that in violation of said order said invention has been  
38 published or disclosed or that an application for a patent therefor  
39 has been filed in a foreign country by the inventor, his successors,  
40 assigns, or legal representatives, or anyone in privity with him or  
41 them, without the consent or approval of the Commissioner of  
42 Patents, and such abandonment shall be held to have occurred as of  
43 the time of such violation. In no case shall the consent or approval  
44 of the Commissioner of Patents be given without the concurrence of  
45 the heads of all departments and the chief officers of all agencies  
46 who caused the order to be issued. Any such holding of abandon-  
47 ment shall constitute forfeiture by the applicant, his successors,  
48 assigns, or legal representatives, or anyone in privity with him or them,  
49 of all claims against the United States based upon such invention.

50 (c) Any applicant, his successors, assigns, or legal representatives,  
51 whose patent is withheld as herein provided, shall, if the order of the  
52 Commissioner of Patents above referred to shall have been faithfully  
53 obeyed, have the right, during a period beginning at the date the  
54 applicant is notified that, except for such order, his application is  
55 otherwise in condition for allowance, or beginning at the effective date  
56 of this Act, whichever is later, and ending two years after the date a  
57 patent is issued on such application, to apply for compensation based  
58 upon the use, if any, of the invention by the Government, such right  
59 to compensation to begin from the date of the first use of the invention  
60 by the Government. The head of any department or agency who  
61 caused the order to be issued is authorized, if any such claim is pre-  
62 sented within the periods above specified, to enter into an agreement

63 with said applicant, his successors, assigns, or legal representatives,  
64 in full settlement and compromise for such use, if any, and any such  
65 settlement agreement entered into shall be final and conclusive for all  
66 purposes, notwithstanding any other provision of law to the contrary.  
67 If full compromise and settlement of any such claim cannot be  
68 effected, the head of any department or agency who caused the order  
69 to be issued, may, in his discretion, administratively award and pay  
70 to such applicant, his successors, assigns, or legal representatives, a  
71 sum not exceeding 75 per centum of the maximum sum if any, which  
72 in the opinion of the head of such department or agency would consti-  
73 tute fair and just compensation for such use, if any. Within two  
74 years after issuance of the patent, any claimant who fails to secure an  
75 award satisfactory to him shall have the right to bring suit against  
76 the United States in the Court of Claims for such amount which,  
77 when added to such award, if any, shall constitute fair and just com-  
78 pensation for the use, if any, of the invention by the Government.  
79 The owner of any patent issued upon an application that was subject  
80 to a secrecy order issued pursuant to paragraph (a) hereof, and who  
81 faithfully obeyed the order, who did not apply for compensation as  
82 above provided, shall have the right, within two years after the date  
83 of issuance of such patent, to bring suit in the Court of Claims for  
84 fair and just compensation for the use by the Government of the  
85 patented invention, such right to compensation to begin at the first  
86 date of such use. In any suit under the provisions of this section,  
87 and in any negotiations looking toward settlement and compromise  
88 of any such claim, the United States may avail itself of any and all  
89 defenses that may be pleaded in an action for infringement. No  
90 compensation under the Act shall be paid for use by the Government  
91 of an invention made while the inventor thereof was employed by  
92 the Government.

93 (d) No person shall file or cause or authorize to be filed in any  
94 foreign country an application for patent or for the registration of  
95 a utility model, industrial design, or model in respect of any inven-  
96 tion made in the United States prior to ninety days after filing in the  
97 United States an application covering such invention except when  
98 authorized in each case by a license obtained from the Commissioner  
99 of Patents under such rules and regulations as he shall prescribe.  
100 No such license shall be granted with respect to any invention which  
101 is the subject matter of a subsisting order issued by the Commissioner  
102 of Patents pursuant to paragraph (a) hereof without the concurrence  
103 of the heads of all departments or the chief officers of all agencies  
104 who caused the order to be issued.

105 (e) Any person and the successors, assigns, or legal representatives  
106 of any such person, shall be debarred from receiving a United States  
107 patent for an invention if such person, or such successors, assigns,  
108 or legal representatives shall, without procuring the authorization  
109 prescribed in paragraph (d) hereof, have made, or consented to or  
110 assisted another's making, application in a foreign country for a  
111 patent or for the registration of a utility model, industrial design,  
112 or model in respect of such invention where authorization for such  
113 application is required by the provisions of paragraph (d) hereof,  
114 and any such United States patent actually issued to any such per-  
115 son, his successors, assigns, or legal representatives so debarred or  
116 becoming debarred shall be invalid.

117 (f) Whoever, during the period or periods of time an invention  
118 has been ordered to be kept secret and the grant of a patent thereon  
119 withheld pursuant to paragraph (a) hereof, shall, with knowledge of  
120 such order and without due authorization, willfully publish or dis-  
121 close or authorize or cause to be published or disclosed such inven-  
122 tion, or any material information with respect thereto, or whoever,  
123 in violation of the provisions of paragraph (d) hereof, shall file or  
124 cause or authorize to be filed in any foreign country an application  
125 for patent or for the registration of a utility model, industrial design,  
126 or model in respect of any invention made in the United States,  
127 shall, upon conviction, be fined not more than \$10,000 or imprisoned  
128 for not more than two years, or both.

129 (g) The Atomic Energy Commission, the Secretary of the Army,  
130 the Secretary of the Navy, the Secretary of the Air Force, the chief  
131 officer of any other department or agency of the Government desig-  
132 nated by the President as a defense agency of the United States,  
133 and the Commissioner of Patents, may separately issue such rules  
134 and regulations as may be necessary and proper to enable the respec-  
135 tive department or agency to carry out the provisions of this section,  
136 and in addition are authorized, under such rules and regulations as  
137 each may prescribe, to delegate and provide for the redelegation  
138 within their respective departments or agencies of any power or  
139 authority conferred by this section to such responsible officers,  
140 boards, agents, or persons as each may designate or appoint.

141 (h) The prohibitions and penalties of this section shall not apply  
142 to any officer or agent of the United States acting within the scope  
143 of his authority.

## Present statute

Act of Oct. 6, 1917, ch. 95, 40 Stat. 394, amended (1) July 1, 1940, ch. 501, 54 Stat. 710, (2) Aug. 21, 1941, ch. 393, 55 Stat. 657, (3) June 16, 1942, ch. 415, 56 Stat. 370:

SEC. 1. [35 U. S. C. 42] Whenever the publication or disclosure of an invention by the granting of a patent might, in the opinion of the Commissioner of Patents, be detrimental to the public safety or defense he may order that the invention be kept secret and withhold the grant of a patent for such period or periods as in his opinion the national interest requires: *Provided*, That the invention disclosed in the application for said patent may be held abandoned upon it being established before or by the Commissioner that in violation of said order said invention has been published or disclosed or that an application for a patent therefor has been filed in a foreign country by the inventor or his assigns or legal representatives, without the consent or approval of the Commissioner of Patents.

When an applicant whose patent is withheld as herein provided and who faithfully obeys the order of the Commissioner of Patents above referred to shall tender his invention to the Government of the United States for its use, he shall, if and when he ultimately receives a patent, have the right to sue for compensation in the Court of Claims, such right to compensation to begin from the date of the use of the invention by the Government: *Provided*, That the Secretary of War or the Secretary of the Navy or the chief officer of any established defense agency of the United States, as the case may be, is authorized to enter into an agreement with the said applicant in full settlement and compromise for the damage accruing to him by reason of the order of secrecy, and for the use of the invention by the Government.

SEC. 2. This Act shall take effect on approval and, together with the provisions of the Act of August 21, 1941 (Public Law 239, Seventy-seventh Congress, first session, ch. 393), shall remain in force during the time when the United States is at war.

SEC. 3. [35 U. S. C. 42a] No person 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, except when authorized in each case by a license obtained from the Commissioner of Patents under such rules and regulations as he shall prescribe.

SEC. 4. [35 U. S. C. 42b] Notwithstanding the provisions of sections 4886 and 4887 of the Revised Statutes (35 U. S. C., secs. 31 and 32), any person and the successors, assigns, or legal representatives of any such person shall be debarred from receiving a United States patent for an invention if such person, or such successors, assigns, or legal representatives shall, without procuring the authorization prescribed in section 3 hereof, 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 such invention where authorization for such application is required by the provisions of section 3, and any such United States patent actually issued to any such person, successors, assigns, or legal representatives so debarred or becoming debarred shall be invalid.

SEC. 5. [35 U. S. C. 42c] 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 the Act approved July 1, 1940 (Public, Numbered 700, Seventy-sixth Congress, third session, ch. 501), shall, with knowledge of such order and without due authorization, willfully publish or disclose or authorize or cause to be published or disclosed such invention, or any material information with respect thereto, or whoever, in violation of the provisions of section 3 hereof, 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.

SEC. 6. [35 U. S. C. 42d] If any provision of this Act or of any section thereof or the application of such provision to any person or circumstances shall be held invalid, the remainder of the Act and of such section and application of such

provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

SEC. 7. [35 U. S. C. 42e] As used in this Act—

The term "person" includes any individual, trustee, corporation, partnership, association, firm, or any other combination of individuals.

The term "application" includes applications, and any modifications, amendments, or supplements thereto or continuances thereof.

SEC. 8. [35 U. S. C. 42f] The prohibitions and penalties of this Act shall not apply to any officer or agent of the United States acting within the scope of his authority.

#### Note

This section follows, with some changes in language, recent legislative proposals: 80th Congress, S. 1726, H. R. 4420; 81st Congress, S. 2557, H. R. 6389.

#### § 39. Filing evidence of invention

- 1 The Commissioner of Patents may accept for deposit and custody
- 2 descriptions and drawings for subsequent use as evidence of the
- 3 existence of the papers on the date deposited, under such regula-
- 4 tions as he may prescribe. Such deposits may be destroyed after a
- 5 period, not less than one year, determined by the Commissioner.

#### Note

This section is new. For similar legislative proposals see 69th Congress, H. R. 10207; 79th Congress, H. R. 6118, S. 1248, hearings Dec. 1945, reported Jan. 29, 1946, S. Report 908; 80th Congress, H. R. 6988, S. 493, hearings, May 1947, reported, S. Report 395; 81st Congress, H. R. 1711, S. 868, reported, S. Report 675, passed Senate, Aug. 9, 1949.



## CHAPTER 4. EXAMINATION OF APPLICATION

Sec.

- 40. Examination of application.
- 41. Notice of rejection.
- 42. Time for prosecuting application.
- 43. Appeal to the Board of Appeals.

### § 40. Examination of application

- 1 The Commissioner shall cause an examination to be made of the  
2 application and the alleged new invention; and if on such examination  
3 it appears that the applicant is justly entitled to a patent under the  
4 law, and that the invention is sufficiently useful and important, the  
5 Commissioner shall issue a patent therefor as provided in chapter 7  
6 of this title.

#### Present statute

Sec. 4893, Revised Statutes of 1874 [35 U. S. C. 36]:

On the filing of any such application and the payment of the fees required by law, the Commissioner of Patents shall cause an examination to be made of the alleged new invention or discovery; and, if on such examination it shall appear that the claimant is justly entitled to a patent under the law, and that the same is sufficiently useful and important, the commissioner shall issue a patent therefor.

#### Note

The first part is revised in language and amplified.

### § 41. Notice of rejection

- 1 Whenever, on examination, any claim for a patent is rejected, or  
2 any objection or requirement made, the Commissioner shall notify  
3 the applicant thereof, stating briefly the reasons for such rejection,  
4 or objection or requirement, together with such information and  
5 references as may be useful in judging of the propriety of continuing  
6 the prosecution of his application; and if after receiving such notice,  
7 the applicant persists in his claim for a patent, with or without  
8 amending his specification, the application shall be reexamined.

#### Present statute

Sec. 4903, Revised Statutes of 1874, amended Aug. 5, 1939, sec. 1, ch. 452, 53 Stat. 1213 [35 U. S. C. 51]:

Whenever, on examination, any claim for a patent is rejected, the commissioner shall notify the applicant thereof, giving him briefly the reasons for such rejection, together with such information and references as may be useful in judging of the propriety of renewing his application or of altering his specification; and if after receiving such notice, the applicant persists in his claim for a patent,

with or without altering his specifications, the commissioner shall order a reexamination of the case.

No amendment for the first time presenting or asserting a claim which is the same as, or for substantially the same subject matter as, a claim of an issued patent may be made in any application unless such amendment is filed within one year from the date on which said patent was granted.

#### Note

The first paragraph is revised in language and amplified; the second paragraph is omitted for inclusion in Section 44.

#### § 42. Time for prosecuting application

- 1 Upon failure of the applicant to prosecute the application within
- 2 six months (or such shorter time, not less than thirty days or any
- 3 extensions thereof, as shall be fixed by the Commissioner and the
- 4 applicant notified thereof in writing) after any action therein, of
- 6 which notice shall have been given or mailed to the applicant, the
- 7 application shall be regarded as abandoned by the parties thereto,
- 8 unless it be shown to the satisfaction of the Commissioner of Patents
- 9 that such delay was unavoidable.

#### Present statute

Sec. 4894, Revised Statutes of 1874, amended (1) Mar. 3, 1897, sec. 4, ch. 391, 29 Stat. 692, 693, (2) July 6, 1916, sec. 1, ch. 225, 39 Stat. 345, 347-8, (3) Mar. 2, 1927, sec. 1, ch. 273, 44 Stat. 1335, (4) Aug. 7, 1939, ch. 568, 53 Stat. 1264 [35 U. S. C. 37]:

All applications for patents shall be completed and prepared for examination within six months after the filing of the application, and in default thereof, or upon failure of the applicant to prosecute the same within six months or such shorter time, not less than thirty days or any extensions thereof, as shall be fixed by the Commissioner of Patents in writing to the applicant after any action therein, of which notice shall have been given to the applicant, they shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner of Patents that such delay was unavoidable. No application shall be regarded as abandoned which has become the property of the Government of the United States and with respect to which the head of any department of the Government shall have certified to the Commissioner of Patents, within a period of three years, that the invention disclosed therein is important to the armament or defense of the United States. Within ninety days, and not less than thirty days, before the expiration of any such three-year period the Commissioner of Patents shall, in writing, notify the head of the department interested in any pending application for patent, of the approaching expiration of the three-year period within which any application for patent shall have been pending.

#### Note

The opening clause is omitted as having no present day meaning or value. The last two sentences are omitted for inclusion in Section 69. The notice is stated as mailed.

#### § 43. Appeal to the Board of Appeals

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

**Present statute**

Sec. 4909, Revised Statutes of 1874, amended (1) Mar. 2, 1927, sec. 5, ch. 273, 44 Stat. 1335, 1336, (2) Aug. 5, 1939, sec. 2, ch. 451, 53 Stat. 1212 [35 U. S. C. 57]:

Every applicant for a patent or for the reissue of a patent, any of the claims of which have 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.

**Note**

Reference to reissues is omitted in view of the general provision in Section 58.



## CHAPTER 5. INTERFERENCES

Sec.

44. Interferences

45. Testimony

46. Subpoenas, witnesses

### § 44. Interferences

1 Whenever an application is made for a patent which, in the opinion  
2 of the Commissioner, would interfere with any pending application,  
3 or with any unexpired patent, he shall give notice thereof to the  
4 applicants, or applicant and patentee, as the case may be. The  
5 question of priority of invention may be determined by a board of  
6 three examiners of interferences or in a civil action filed as prescribed  
7 in section 52 of this title. The judgment of the Patent Office adverse  
8 to the claim of an applicant shall constitute a final refusal of a patent  
9 by the Patent Office and the Commissioner may issue a patent to the  
10 applicant who is adjudged the prior inventor. Judgment adverse to a  
11 patentee when final shall constitute cancellation of the claims involved  
12 from the patent.

13 No amendment for the first time presenting or asserting a claim  
14 which is the same as, or for substantially the same subject matter as,  
15 a claim of an issued patent may be made in any application unless  
16 such amendment is filed within one year from the date on which  
17 said patent was granted.

#### Present statute

Sec. 4904, Revised Statutes of 1874, amended (1) Mar. 2, 1927, sec. 4, ch. 273,  
44 Stat. 1335, 1336, (2) Aug. 5, 1939, sec. 1, ch. 451, 53 Stat. 1212 [35 U. S. C. 52]:

Whenever an application is made for a patent which, in the opinion of the  
commissioner, would interfere with any pending application, or with any un-  
expired patent, he shall give notice thereof to the applicants, or applicant and  
patentee, as the case may be, and shall direct a board of three examiners of  
interferences to proceed to determine the question of priority of invention. And  
the commissioner may issue a patent to the party who is adjudged the prior  
inventor.

#### Notes

The second paragraph is transposed from R. S. 4903 (see section 41) as being  
more appropriate under interferences.

The section is revised to provide that the interference may be tried either in the  
Patent Office or in the courts. Final decision adverse to a patentee constitutes  
cancellation of the claims involved. For legislative proposals relating to inter-  
ferences see, 69th Congress, H. R. 9217; 73d Congress, H. R. 9697; 78th Congress,  
H. R. 3264, hearings, February 1944.

**§ 45. Testimony**

1 The Commissioner of Patents may establish rules for taking affi-  
 2 davits and depositions, or for the taking of testimony before an officer  
 3 of the Patent Office, required in cases pending in the Patent Office,  
 4 and such affidavits and depositions may be taken before any officer  
 5 authorized by law to take depositions to be used in the courts of the  
 6 United States, or of the State where the officer resides.

**Present statute**

Sec. 4905, Revised Statutes of 1874 [35 U. S. C. 53]:

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

**Note**

Provision is added relative to taking testimony before an officer of the Patent Office.

**§ 46. Subpoenas, witnesses**

1 The clerk of any court of the United States, for any district or  
 2 Territory wherein testimony is to be taken for use in any contested  
 3 case pending in the Patent Office, shall, upon the application of any  
 4 party thereto, issue a subpoena for any witness residing or being  
 5 within such district or Territory, commanding him to appear and  
 6 testify before an officer in such district or Territory authorized to  
 7 take depositions and affidavits at the time and place stated. No  
 8 witness shall be required to attend at any place more than one  
 9 hundred miles from the place where the subpoena is served upon him;  
 10 and the provisions of the Federal Rules of Civil Procedure relating  
 11 to the issuance of subpoenas duces tecum shall apply to contested  
 12 cases in the Patent Office.

13 Every witness subpoenaed and in attendance shall be allowed the  
 14 fees allowed to witnesses attending the courts of the United States.

15 Whenever any witness, after being duly served with such subpoena,  
 16 neglects or refuses to appear, or after appearing refuses to testify,  
 17 a judge of the court whose clerk issued the subpoena may, on proof of  
 18 such neglect or refusal, enforce obedience to the process, or punish  
 19 the disobedience, as in other like cases. But no witness shall be  
 20 deemed guilty of contempt for disobeying such subpoena, unless his  
 21 fees and traveling expenses in going to, returning from, and one day's  
 22 attendance at the place of examination, are paid or tendered him at  
 23 the time of the service of the subpoena; nor for refusing to disclose  
 24 any secret invention or discovery made or owned by himself.

**Present statute**

Sec. 4906, Revised Statutes of 1874, amended Feb. 18, 1922, sec. 7, ch. 58, 42 Stat. 389, 391-2 [35 U. S. C. 54]:

The clerk of any court of the United States, for any district or Territory wherein testimony is to be taken for use in any contested case pending in the Patent Office, shall, upon the application of any party thereto, or of his agent or attorney, issue a subpoena for any witness residing or being within such district or Territory, commanding him to appear and testify before any officer in such district or Territory authorized to take depositions and affidavits at any time and place in the subpoena stated. But no witness shall be required to attend at any place more than forty miles from the place where the subpoena is served upon him; and the provisions of section 869 of the Revised Statutes relating to the issuance of subpoenas duces tecum shall apply to contested cases in the Patent Office.

Sec. 4907, Revised Statutes of 1874 [35 U. S. C. 55]:

Every witness duly subpoenaed and in attendance shall be allowed the same fees as are allowed to witnesses attending the courts of the United States.

Sec. 4908, Revised Statutes of 1874 [35 U. S. C. 56]:

Whenever any witness, after being duly served with such subpoena, neglects or refuses to appear, or after appearing refuses to testify, the judge of the court whose clerk issued the subpoena may, on proof of such neglect or refusal, enforce obedience to the process, or punish the disobedience, as in other like cases. But no witness shall be deemed guilty of contempt for disobeying such subpoena, unless his fees and traveling expenses in going to, 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 invention or discovery made or owned by himself.

**Note**

Three sections are combined with some changes in language. Reference to a repealed statute in the first paragraph is replaced by reference to the rules of civil procedure and thirty miles has been changed to one hundred miles.



## CHAPTER 6. REVIEW OF PATENT OFFICE DECISIONS

Sec.

- 47. Appeal to Court of Customs and Patent Appeals.
- 48. Same. Notice of appeal.
- 49. Same. Proceedings on appeal.
- 50. Same. Decision on appeal.
- 51. Civil action to obtain patent.
- 52. Civil action in case of interference.

### § 47. Appeal to Court of Customs and Patent Appeals

- 1 An applicant dissatisfied with the decision of the Board of Appeals
- 2 may appeal to the United States Court of Customs and Patent
- 3 Appeals, in which case he waives his right to proceed under section 51
- 4 of this title. A party to an interference dissatisfied with the decision
- 5 of the board of interference examiners may appeal to the United
- 6 States Court of Customs and Patent Appeals.

#### Present statute

Sec. 4911, Revised Statutes of 1874, amended (1) Mar. 2, 1927, sec. 8, ch. 273, 44 Stat. 1336, (2) Mar. 2, 1929, sec. 2a, ch. 488, 45 Stat. 1476, (3) Aug. 5, 1939, sec. 3, ch. 451, 53 Stat. 1212 [35 U. S. C. 59a]:

If any applicant is dissatisfied with the decision of the board of appeals, he may appeal to the United States Court of Customs and Patent Appeals, in which case he waives his right to proceed under section 4915 of the Revised Statutes. If any party to an interference is dissatisfied with the decision of the board of interference examiners, he may appeal to the United States Court of Customs and Patent Appeals: *Provided*, That such appeal shall be dismissed if any adverse party to such interference shall, within twenty days after the appellant shall have filed notice of appeal according to section 4912 of the Revised Statutes, file notice with the Commissioner of Patents that he elects to have all further proceedings, conducted as provided in section 4915 of the Revised Statutes. Thereupon the appellant shall have thirty days thereafter within which to file a bill of equity under said section 4915, in default of which the decisions appealed from shall govern the further proceedings in the case.

#### Note

The proviso is omitted in view of the proposed change in the time of electing a civil action.

### § 48. Same. Notice of appeal

- 1 When an appeal is taken to the United States Court of Customs
- 2 and Patent Appeals, the appellant shall give notice thereof to the
- 3 Commissioner, and file in the Patent Office, within such time as the
- 4 Commissioner appoints; his reasons of appeal, specifically set forth in
- 5 writing.

**Present statute**

Sec. 4912, Revised Statutes of 1874, amended (1) Feb. 9, 1893, sec. 9, ch. 74, 27 Stat. 436, (2) Mar. 2, 1927, sec. 9, ch. 273, 44 Stat. 1336, (3) Mar. 2, 1929, sec. 2b, ch. 488, 45 Stat. 1476 [35 U. S. C. 60]:

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 file in the Patent Office, within such time as the commissioner shall appoint, his reasons of appeal, specifically set forth in writing.

**Note**

No change.

**§ 49. Same. Proceedings on appeal**

1 The court shall, before hearing such appeal, give notice to the  
2 Commissioner of the time and place of the hearing, and the Com-  
3 missioner shall thereupon give notice thereof in such manner as the  
4 court prescribes, to the parties thereto. The party appealing shall  
5 lay before the court certified copies of all the necessary original  
6 papers and evidence in the case, and the Commissioner shall furnish  
7 the court with the grounds of his decision, fully set forth in writing  
8 touching all the points involved by the reasons of appeal.

**Present statute**

Sec. 4913, Revised Statutes of 1874, amended Mar. 2, 1927, sec. 10, ch. 273, 44 Stat. 1336 [35 U. S. C. 61]:

The court shall, before hearing such appeal, give notice to the commissioner of the time and place of the hearing, and on receiving such notice the commissioner shall give notice of such time and place in such manner as the court may prescribe, to all parties who appear to be interested therein. The party appealing shall lay before the court certified copies of all the original papers and evidence in the case, and the commissioner shall furnish the court with the grounds of his decision, fully set forth in writing touching all the points involved by the reasons of appeal.

**Note**

Language is changed.

**§ 50. Same. Decision of appeal**

1 The court, on petition, shall hear and determine such appeal  
2 on the evidence produced before the Patent Office, at such early  
3 and convenient time as the court may appoint; and the decision shall  
4 be confined to the points set forth in the reasons of appeal. After  
5 hearing the case the court shall return to the Commissioner a cer-  
6 tificate of its proceedings and decision, which shall be entered of  
7 record in the Patent Office and govern the further proceedings in  
8 the case.

**Present statute**

Sec. 4914, Revised Statutes of 1874 [35 U. S. C. 62]:

The court, on petition, shall hear and determine such appeal, and revise the decision appealed from in a summary way, on the evidence produced before the

commissioner, at such early and convenient time as the court may appoint; and the revision shall be confined to the points set forth in the reasons of appeal. After hearing the case 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 shall govern the further proceedings in the case. But no opinion or decision of the court in any such case shall preclude any person interested from the right to contest the validity of such patent in any court wherein the same may be called in question.

**Note**

Language is changed and the last sentence omitted.

**§ 51. Civil action to obtain patent**

1 An applicant dissatisfied with a decision of the Board of Appeals,  
2 may, unless appeal has been taken to the United States Court of  
3 Customs and Patent Appeals, have remedy by civil action, if filed  
4 within sixty days after such decision. The court having cognizance  
5 thereof may adjudge that such applicant is entitled to receive a  
6 patent for his invention, as specified in any of his claims involved,  
7 as the facts in the case may appear. Such adjudication, if it be in  
8 favor of the right of the applicant, shall authorize the Commissioner  
9 to issue such patent on the applicant filing in the Patent Office a  
10 copy of the judgment and otherwise complying with the requirements  
11 of law. A copy of the complaint shall be served on the Commissioner  
12 and all the expenses of the proceedings shall be paid by the applicant,  
13 whether or not the final decision is in his favor.

**Present statute**

Sec. 4915, Revised Statutes of 1874, amended (1) Feb. 9, 1893, sec. 9, ch. 74, 27 Stat. 436, (2) Mar. 2, 1927, sec. 11, ch. 273, 44 Stat. 1336, (3) Mar. 2, 1929, sec. 2b, ch. 488, 45 Stat. 1476, (4) Aug. 5, 1939, sec. 4, ch. 451, 53 Stat. 1212 [35 U. S. C. 63]:

Whenever a patent on application is refused by the Board of Appeals or whenever any applicant is dissatisfied with the decision of the board of interference examiners, the applicant, unless appeal has been taken to the United States Court of Customs and Patent Appeals, and such appeal is pending or has been decided, in which case no action may be brought under this section, may have remedy by bill in equity, if filed within six months after such refusal or decision; and the court having cognizance thereof, on notice to adverse parties and other due proceedings had, may adjudge that such applicant is entitled, according to law, to receive a patent for his invention, as specified in his claim or for any part thereof, as the facts in the case may appear. And such adjudication, if it be in favor of the right of the applicant, shall authorize the commissioner to issue such patent on the applicant filing in the Patent Office a copy of the judgment and otherwise complying with the requirements of law. In all cases where there is no opposing party a copy of the bill shall be served on the commissioner; and all the expenses of the proceedings shall be paid by the applicant, whether the final decision is in his favor or not. In all suits brought hereunder where there are adverse parties the record in the Patent Office shall be admitted in whole or in part, on motion of either party, subject to such terms and conditions as to costs, expenses, and the further cross-examination of the witnesses as the court may impose, without prejudice, however, to the right of the parties to take further testimony. The testimony and exhibits, or parts thereof, of the record in the Patent Office when admitted shall have the same force and effect as if originally taken and produced in the suit.

**Note**

Bill in equity is changed to civil action and the section is restricted to exclude interferences which are covered by the next section. The time for filing the action is reduced to sixty days, the same as the time now allowed for appeal.

**§ 52. Civil action in case of interference**

1 A party to an interference declared in accordance with section 44  
 2 of this title upon whom the burden of proof rests as determined by  
 3 the Patent Office may have the question of priority of invention  
 4 determined by civil action brought against the other party or parties  
 5 to the interference at such stage in the proceedings and within the  
 6 time fixed by the Commissioner of Patents. The party upon whom  
 7 no burden of proof rests may file notice within the time fixed by the  
 8 Commissioner that he elects to have the question of priority deter-  
 9 mined by civil action whereupon the other party or parties shall file  
 10 such action within the time prescribed, and upon failure to file such  
 11 action the case shall be decided by default.

12 Such civil action may be filed against the party or parties in interest  
 13 as shown by the records of the Patent Office, but any party in interest  
 14 may become a party to the action and the Court may transfer the  
 15 action to a more appropriate jurisdiction. If there be adverse parties  
 16 residing in a plurality of districts not embraced within the same state,  
 17 or an adverse party residing in a foreign country, the United States  
 18 District Court for the District of Columbia shall have jurisdiction.  
 19 The Commissioner of Patents shall not be a necessary party but he  
 20 shall be notified of the filing of the action by the clerk of the court in  
 21 which it is filed and shall have the right to intervene in the action.

**Present statute**

Sec. 4915, Revised Statutes of 1874 [35 U. S. C. 63]. See following section 51.  
 Act of Mar. 3, 1927, ch. 364, 44 Stat. 1394 [35 U. S. C. 72a]:

"Section 52 of the Judicial Code be, and the same is hereby, amended by adding thereto the following:

"And upon the filing of a bill in the Supreme Court of the District of Columbia wherein remedy is sought under section 4915 or section 4918 of the Revised Statutes, without seeking other remedy, if it shall appear that there is an adverse party residing in a foreign country, or adverse parties residing in a plurality of districts not embraced within the same State, the court shall have jurisdiction thereof and writs shall, unless the adverse party or parties voluntarily make appearance, be issued against all of the adverse parties with the force and effect and in the manner set forth in this section; provided that writs issued against parties residing in foreign countries pursuant to this section may be served by publication or otherwise as the court shall direct."

**Note**

This section follows section 44 relating to interferences and changes the character of the civil action in the case of interferences to an original proceeding instead of a review of a previous Patent Office proceeding.

## CHAPTER 7. ISSUE OF PATENT

Sec.

- 53. Time of issue of patent.
- 54. Issue of patent to assignee.
- 55. How issued.
- 56. Contents of patent.
- 57. Term of patent.

### § 53. Time of issue of patent

- 1 The patent shall issue within three months from the date of the
- 2 payment of the final fee, which fee shall be paid not later than six
- 3 months from the time at which the application was allowed and
- 4 notice thereof was sent to the applicant; and if the final fee is not
- 5 paid within that period the patent shall be withheld. The Com-
- 6 missioner of Patents may in his discretion receive the final fee if
- 7 paid within one year after the six months' period for payment has
- 8 passed and the patent shall issue.

#### Present statute

Sec. 4885, Revised Statutes of 1874, amended (1) May 23, 1908, ch. 189, 35 Stat. 246, (2) Aug. 9, 1939, sec. 2, ch. 619, 53 Stat. 1293 [35 U. S. C. 41]:

Every patent shall issue within a period of three months from the date of the payment of the final fee, which fee shall be paid not later than six months from the time at which the application was passed and allowed and notice thereof was sent to the applicant or his agent; and if the final fee is not paid within that period the patent shall be withheld: *Provided, however,* That the Commissioner of Patents may in his discretion receive the final fee if paid within one year after the six months' period for payment has passed and the patent shall issue.

#### Note

Language is changed.

### § 54. Issue of patent to assignee

- 1 Patents may be granted to the assignee of the inventor but the
- 2 assignment must first be entered of record in the Patent Office, and
- 3 the application shall be made and the specification sworn to by the
- 4 inventor, except as otherwise provided in this title.

#### Present statute

Sec. 4895, Revised Statutes of 1874 [35 U. S. C. 44]:

Patents may be granted and issued or reissued to the assignee of the inventor or discoverer; but the assignment must first be entered of record in the Patent Office. And in all cases of an application by an assignee for the issue of a patent, the application shall be made and the specification sworn to by the inventor or discoverer; and in all cases of an application for a reissue of any patent, the application must be made and the corrected specification signed by the inventor or discoverer, if he is living, unless the patent was issued and assignment made before the eighth day of July, eighteen hundred and seventy.

**Note**

Language is changed and the reference to reissues is omitted in view of the general provision in Section 58.

**§ 55. How issued**

1 All patents shall be issued in the name of the United States of Amer-  
 2 ica, under the seal of the Patent Office, and shall either be signed by  
 3 the Commissioner or have his signature placed thereon and attested  
 4 by an officer of the Patent Office designated by the Commissioner,  
 5 and shall be recorded in the Patent Office.

**Present statute**

Sec. 4883, Revised Statutes of 1874, amended (1) Feb. 18, 1888, ch. 15, 25 Stat. 40, (2) Apr. 11, 1902, ch. 417, 32 Stat. 95, (3) Feb. 18, 1922, sec. 5, ch. 58, 42 Stat. 391 [35 U. S. C. 39]:

All patents shall be issued in the name of the United States of America, under the seal of the Patent Office, and shall either be signed by the Commissioner of Patents or have his name printed thereon and attested by an Assistant Commissioner of Patents or by one of the law examiners duly designated by the commissioner, and shall be recorded, together with the specifications, in the Patent Office in books to be kept for that purpose.

**Note**

The phrases referring to the attesting officers and to the recording of the patents are broadened.

**§ 56. Contents of patent**

1 Every patent shall contain a short title of the invention and a  
 2 grant to the patentee, his heirs or assigns, for the term thereof, of the  
 3 exclusive right to make, use, and vend the invention throughout the  
 4 United States and the territories thereof, referring to the specification  
 5 for the particulars thereof. A copy of the specification and drawings  
 6 shall be annexed to the patent and be a part thereof.

**Present statute**

Sec. 4884, Revised Statutes of 1874, amended May 23, 1930, sec. 1, ch. 312, 46 Stat. 376 [35 U. S. C. 40]:

Every patent shall contain a short title or description of the invention or discovery, correctly indicating its nature and design, and a grant to the patentee, his heirs or assigns, for the term of seventeen years, of the exclusive right to make use, and vend the invention or discovery (including in the case of a plant patent the exclusive right to asexually reproduce the plant) throughout the United States and the Territories thereof, 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.

**Note**

The reference to plants is omitted for inclusion in another section and the reference to the title is shortened since the title is of no legal significance. The term of the patent is specified in the next section.

**§ 57. Term of patent**

1 The term of a patent shall begin with the issuance thereof and shall  
2 terminate, except as otherwise provided, at a date not more than  
3 twenty years (plus such further time to compensate for delays during  
4 the pendency of the application not chargeable to the applicant as  
5 may be determined by the Commissioner) from the date of filing of the  
6 application in the United States or the date of filing of the earliest  
7 application in the United States the filing date of which is claimed;  
8 but in no case shall the term of any patent be more than seventeen  
9 years.

**Note**

This section is new and follows previous legislative proposals; see 72d Congress, H. R. 10153, hearings March 1932, H. R. 11016, reported May 3, 1932, H. Report 1200; 73d Congress, H. R. 5554; 74th Congress, H. R. 4986; 76th Congress, S. 2688, hearings July, 1939, reported July 11, 1939, S. Report 747, passed Senate Apr. 26, 1940; 77th Congress, H. R. 3211, S. 892; 79th Congress, H. R. 2631, hearings May and June 1945.



## CHAPTER 8. AMENDMENT AND CORRECTION OF PATENTS

Sec.

58. Reissue of defective patents.

59. Same. Effect of reissue.

60. Disclaimer of invalid claims.

61. Certificate of correction of Patent Office mistake.

62. Certificate of correction of applicant's mistake.

63. Misjoinder of inventor.

### § 58. Reissue of defective patents

1 Whenever any patent is deemed wholly or partly inoperative or  
2 invalid, by reason of a defective or insufficient specification, or by  
3 reason of the patentee claiming more than he had a right to claim in  
4 the patent, if the error has arisen by inadvertence, accident, or  
5 mistake, and without any fraudulent or deceptive intention, the  
6 Commissioner shall, on the surrender of such patent and the pay-  
7 ment of the fee required by law, cause a patent for the same invention,  
8 and in accordance with an amended specification, to be reissued to  
9 the patentee or to his assigns or legal representatives, for the unex-  
10 pired part of the term of the original patent. No new matter shall  
11 be introduced into the specification, nor in case of a machine patent  
12 shall the model or drawings be amended, except each by the other,  
13 and the specification in every such case shall be subject to revision  
14 and restriction in the same manner as original applications. The  
15 Commissioner may, in his discretion, cause several patents to be  
16 issued for distinct and separate parts of the thing patented, upon  
17 demand of the applicant, and upon payment of the required fee for a  
18 reissue for each of such reissued letters patent.

19 Application for reissue of a patent shall be made in the same  
20 manner as applications for patent and the provisions of this title  
21 relating to applications for patent shall be applicable to applications  
22 for reissue of a patent, but application for reissue may be made and  
23 sworn to by the assignee of the entire interest if the reissue serves  
24 only to diminish the scope of the claims of the patent.

#### Present statute

Sec. 4916, Revised Statutes of 1874, amended May 24, 1928, ch. 730, 45 Stat. 732 [35 U. S. C. 64]:

Whenever any patent is wholly or partly inoperative or invalid, by reason of a defective or insufficient specification, or by reason of the patentee claiming as his own invention or discovery more than he had a right to claim as new, if the error has arisen by inadvertence, accident, or mistake, and without any

fraudulent or deceptive intention, the commissioner shall, on the surrender of such patent and the payment of the duty required by law, cause a patent for the same invention, and in accordance with the corrected specification, to be reissued to the patentee or to his assigns or legal representatives, for the unexpired part of the term of the original patent. Such surrender shall take effect upon the issue of the reissued patent, but in so far as the claims of the original and reissued patents are identical, 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. The commissioner may, in his discretion, cause several patents to be issued 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 letters patent. The specifications and claims in every such case shall be subject to revision and restriction in the same manner as original applications are. Every patent so reissued, together with the corrected specifications, shall have the same effect and operation in law, on the trial of all actions for causes thereafter arising, as if the same had been originally filed in such corrected form; but no new matter shall be introduced into the specification, nor in case of a machine patent shall the model or drawings be amended, except each by the other; but when there is neither model nor drawing, amendments may be made upon proof satisfactory to the commissioner that such new matter or amendment was a part of the original invention, and was omitted from the specification by inadvertence, accident, or mistake, as aforesaid.

#### Note

(1) The sentences of the present statute are rearranged and divided into two sections.

(2) Some changes in language are made and the clause at the end of the present statute is omitted as obsolete.

(3) The second paragraph incorporates the requirements of other applications and adds a provision relating to application for reissue in certain cases by the assignee. This latter follows to a limited extent previous legislative proposals: 72d Congress, S. 3358, H. R. 7237, H. R. 10152, hearings, March 1932, H. R. 11018, reported May 3, 1932, H. Report 1202; 73d Congress, H. R. 6011; 76th Congress, H. R. 8444 and 9386, hearings May 1940; 77th Congress, H. R. 3212.

#### § 59. Same. Effect of reissue

1 The surrender of the original patent shall take effect upon the  
 2 issue of the reissued patent, and every patent so reissued, together  
 3 with the amended specification, shall have the same effect and  
 4 operation in law, on the trial of all actions for causes thereafter  
 5 arising, as if the same had been originally granted in such amended  
 6 form, but in so far as the claims of the original and reissued patents  
 7 are identical, such surrender shall not affect any action then pending  
 8 nor abate any cause of action then existing, and the reissued patent  
 9 to the extent that its claims are identical with the original patent  
 10 shall constitute a continuation thereof and have effect continuously  
 11 from the date of the original patent. No reissue shall abridge or  
 12 otherwise affect the right of any person to continue any manufacture,  
 13 use or sale commenced before the grant of the reissue which did not  
 14 constitute an infringement of the original patent, nor shall the further  
 15 manufacture, use or sale by him or his agents or successors in business,

16 or the use or sale of products resulting from such manufacture or use,  
17 constitute an infringement of the reissued patent, nor shall any such  
18 reissue abridge or otherwise affect any right of the patentee of any  
19 patent granted before the grant of the reissue, or his agents or licensees  
20 who derived their rights from him prior to the grant of the reissue, to  
21 the extent that they shall not be amenable to any action for infringe-  
22 ment of the reissue by virtue of making, using, or selling the inven-  
23 tion of such intervening patent unless such making, using or selling  
24 would also constitute an infringement of the original patent.

**Present statute**

Sec. 4916, Revised Statutes of 1874, amended May 24, 1928, ch. 730, 45 Stat. 732 [35 U. S. C. 64]. See following section 58.

**Note**

A provision for the protection of intervening rights is added. This follows in form similar provisions in the Boykin Act, secs. 1, 4, Act of Aug. 8, 1946, ch. 910, 60 Stat. 940, and is broader than prior legislative proposals; 72d Congress, H. R. 10924; 73d Congress, H. R. 3526.

**§ 60. Disclaimer of invalid claim**

1 Whenever, through inadvertence, accident, or mistake, and  
2 without any fraudulent or deceptive intention, a claim of a patent is  
3 invalid, the patent shall be valid as to the remaining claims, and the  
4 patentee, his heirs or assigns, whether of the whole or any sectional  
5 interest therein, may, on payment of the fee required by law, make  
6 disclaimer of the invalid claim, stating therein the extent of his  
7 interest in such patent. Such disclaimer shall be in writing, and  
8 recorded in the Patent Office; and it shall thereafter be considered  
9 as part of the original specification to the extent of the interest  
10 possessed by the disclaimant and by those claiming under him after  
11 the record thereof.

**Present statute**

Sec. 4917, Revised Statutes of 1874 [35 U. S. C. 65]:

Whenever, through inadvertence, accident, or mistake, and without any fraudulent or deceptive intention, a patentee has claimed more than that of which he was the original or first inventor or discoverer, his patent shall be valid for all that part which is truly and justly his own, provided the same is a material or substantial part of the thing patented; and any such patentee, his heirs or assigns, whether of the whole or any sectional interest therein, may, on payment of the fee required by law, make disclaimer of such parts of the thing patented as he shall not choose to claim or to hold by virtue of the patent or assignment, stating therein the extent of his interest in such patent. Such disclaimer shall be in writing, attested by one or more witnesses, and recorded in the Patent Office; and it shall thereafter be considered as part of the original specification to the extent of the interest possessed by the claimant and by those claiming under him after the record thereof. But no such disclaimer shall affect any action pending at the time of its being filed, except so far as may relate to the question of unreasonable neglect or delay in filing it.

**Note**

Language is changed and substantive changes are introduced, (1) only a claim as a whole may be disclaimed, and (2) the provision regarding delay is omitted. Prior legislative proposals, with modifications, are followed: 72d Congress, S. 3357, H. R. 7245, hearings March 1932, H. R. 11010, reported May 3, 1932, H. Report 1196; 76th Congress, H. R. 9384, hearings May 1940; 77th Congress, H. R. 1090, H. R. 5258, reported H. Report 990, passed House Aug. 4, 1941; 81st Congress, S. 2518, H. R. 6436. See Section 85.

**§ 61. Certificate of correction of Patent Office mistake**

1 Whenever a mistake in a patent, incurred through the fault of  
 2 the Patent Office, is clearly disclosed by the records or files of the  
 3 Office, a certificate stating the fact and nature of such mistake, signed  
 4 by the Commissioner and sealed with the seal of the Patent Office,  
 5 may be issued, without charge, and recorded in the records of patents,  
 6 and a printed copy thereof attached to each printed copy of the  
 7 patent, and such certificate shall thereafter be considered as part of  
 8 the original patent, and every such patent, together with such certifi-  
 9 cate, shall have the same effect and operation in law on the trial of  
 10 all actions for causes thereafter arising as if the same had been origi-  
 11 nally issued in such corrected form. In the discretion of the Com-  
 12 missioner, a reissued patent may be issued without charge in lieu of  
 13 a certificate of correction.

**Present statute**

Sec. 1, Act of Mar. 4, 1925, ch. 535, 43 Stat. 1268 [35 U. S. C. 88]:

Whenever a mistake in a patent, incurred through the fault of the Patent Office, is clearly disclosed by the records or files of the office, a certificate stating the fact and nature of such mistake, signed by the Commissioner of Patents and sealed with the seal of the Patent Office, may be issued, without charge, and recorded in the records of patents, and a printed copy thereof attached to each printed copy of the patent, and such certificate shall thereafter be considered as part of the original, and every patent, together with such certificate, shall have the same effect and operation in law on the trial of all actions for causes thereafter arising as if the same had been originally issued in such corrected form. All such certificates issued prior to March 4, 1925, in accordance with the rules of the Patent Office and the patent to which they are attached shall have the same force and effect as if such certificates had been specifically authorized by statute

**Note**

The last sentence of the present statute is omitted as obsolete. A sentence is added similar to a provision in the corresponding section in the trade-mark law, 15 U. S. C. 1057 (f).

**§ 62. Certificate of correction of applicant's mistake**

1 Whenever a mistake of a clerical or typographical nature, or of  
 2 minor character, which was not the fault of the Patent Office, appears  
 3 in a patent and a showing has been made that such mistake occurred  
 4 in good faith, the Commissioner is authorized to issue a certificate of  
 5 correction, provided that the correction does not involve such

6 changes in the patent as would require re-examination, and every  
7 such patent, together with such certificate, shall have the same  
8 effect and operation in law on the trial of all actions for causes there-  
9 after arising as if the same had been originally issued in such corrected  
10 form.

#### Note

This section is new and follows a similar provision in the trade-mark law, 15 U. S. C. 1057 (g).

#### § 63. Misjoinder of inventor

1 Whenever a patent has been issued on the application of two or  
2 more persons as joint inventors and it appears that one of such persons  
3 was not in fact a joint inventor and had no part of an inventive nature  
4 in the making of the invention, and that he was included as a joint  
5 inventor by inadvertence or mistake and without any fraudulent or  
6 deceptive intention, the Commissioner may, on application of all the  
7 parties and the assignee if any, with proof of the facts and such other  
8 requirements as may be imposed, issue a certificate deleting the name  
9 of the erroneously joined person from the patent as a joint inventor.

10 Whenever a patent has been issued on the application of a person  
11 as a sole inventor, or on the application of two or more persons as  
12 joint inventors, and it appears that an additional person was in fact  
13 a joint inventor with the applicant or applicants and should have  
14 been included as a joint inventor, but was not included through  
15 inadvertence or mistake and without any fraudulent or deceptive  
16 intention, the Commissioner may, on application of all the parties  
17 and the assignee if any, with proof of the facts and such other require-  
18 ments as may be imposed, issue a certificate adding the name of the  
19 erroneously omitted person to the patent as a joint inventor.

20 No patent shall be held invalid merely because of misjoinder or  
21 nonjoinder of a joint inventor if such error can be corrected in the  
22 manner specified in this section and the court before which such  
23 matter may be called in question may order correction of the patent  
24 on notice and hearing of all parties concerned.

#### Note

This section is new and is companion to section 32. For prior legislative proposals on the same subject see: 69th Congress, H. R. 7562; 70th Congress, H. R. 8745; 71st Congress, S. 4753; 72d Congress, S. 3358, H. R. 7237, H. R. 10154, hearings March 1932, H. R. 11017, reported May 3, 1932, H. Report 1201; 73d Congress, H. R. 6001; 74th Congress, H. R. 4985, hearings, May 1935, reported June 22, 1935; 76th Congress, H. R. 9386; 77th Congress, H. R. 3212.



## CHAPTER 9. OWNERSHIP, ASSIGNMENTS, AND LICENSES

Sec.

64. Ownership, assignment.

65. Joint owners.

66. Licenses, conditions in contracts.

67. Recording license agreements.

### § 64. Ownership, assignment

1 Subject to the provisions of this title, patents shall be protected  
2 as and have the applicable rights of other property, and the rules of  
3 law applicable to the ownership and devolution of personal property  
4 generally shall apply to patents as they apply to other intangible  
5 property.

6 Every application for patent or patent or any interest therein  
7 shall be assignable in law by an instrument in writing, and the  
8 applicant or patentee or his assigns or legal representatives may in  
9 like manner grant and convey an exclusive right under his applica-  
10 tion for patent or patent to the whole or any specified part of the  
11 United States.

12 If any such assignment, grant, or conveyance of any application  
13 for patent or patent shall be acknowledged before any notary public  
14 of the several States or Territories or the District of Columbia, or  
15 any commissioner of any court of the United States for any district  
16 or Territory, or before any secretary of legation or consular officer  
17 authorized by law to administer oaths or perform notarial acts, the  
18 certificate of such acknowledgment, under the hand and official seal  
19 of such notary or other officer, shall be prima facie evidence of the  
20 execution of such assignment, grant or conveyance.

21 An assignment, grant or conveyance shall be void as against any  
22 subsequent purchaser or mortgagee for a valuable consideration,  
23 without notice, whose purchase or mortgage is recorded in the Patent  
24 Office within three months from its date, or prior to the recordation  
25 in the Patent Office of the said first mentioned assignment, grant or  
26 conveyance, unless the said first mentioned assignment, grant or  
27 conveyance is recorded in the Patent Office within three months  
28 from its date, or prior to such subsequent purchase or mortgage.

29 If any such assignment, grant or conveyance is not recorded in the  
30 Patent Office within three months from its date, no suit for infringe-  
31 ment may be brought by either party during the period the instrument  
32 remains unrecorded nor may any recovery be had for any infringe-  
33 ment occurring during said period.

34 The word "patentee" used in this title includes not only the  
 35 patentee to whom the patent was issued but also the successors in  
 36 title to the patentee.

**Present statute:**

Sec. 4898, Revised Statutes of 1874, amended (1) Mar. 3, 1897, sec. 5, ch. 391, 29 Stat. 693, (2) Feb. 18, 1922, sec. 6, ch. 58, 42 Stat. 391, (3) Aug. 18, 1941, ch. 370, 55 Stat. 634 [35 U. S. C. 47]:

Every application for patent or patent or any interest therein shall be assignable in law by an instrument in writing, and the applicant or patentee or his assigns or legal representatives may in like manner grant and convey an exclusive right under his application for patent or patent to the whole or any specified part of the United States. 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 the date thereof or prior to such subsequent purchase or mortgage.

If any such assignment, grant, or conveyance of any application for patent or patent shall be acknowledged before any notary public of the several States or Territories or the District of Columbia, or any commissioner of any court of the United States for any district or Territory, or before any secretary of legation or consular officer authorized to administer oaths or perform notarial acts under section 1750 of the Revised Statutes the certificate of such acknowledgment, under the hand and official seal of such notary or other officer, shall be prima facie evidence of the execution of such assignment, grant, or conveyance.

**Note**

The first paragraph is new but effects no change. The second paragraph is the same as in the present statute. The third paragraph is the same as in the present statute but a specific reference to another statute is omitted and "by law" substituted. The fourth paragraph changes the present statute to require the second assignment to be recorded before it can defeat the first, following H. R. 3957, 80th Congress. The fifth paragraph follows H. R. 3756, 79th Congress, which passed the House of Representatives Apr. 1, 1946.

**§ 65. Joint owners**

1 Whenever two or more persons own a patent jointly, either by the  
 2 issuing of the patent to them jointly or by reason of the assignment  
 3 of an undivided interest in the patent or by reason of succession in  
 4 title to such interest, each of the joint owners, in the absence of any  
 5 agreement to the contrary, shall be entitled to make, use or sell the  
 6 patented invention for his own benefit without accounting to the  
 7 other joint owners, subject to any contract or agreement, but neither  
 8 of the owners may grant licenses or assign his interest or any part  
 9 thereof without the consent of the other owners, or without pro-  
 10 portionately accounting to the other joint owners.

**Note**

The first part of this section states existing law but the last clause effects a change in the law in requiring consent or an accounting between joint owners in the case of an assignment or license.

## § 66. Licenses, conditions in contracts

1 (a) A patentee may grant licenses permitting making, using or  
2 selling the patented invention, in so far as his exclusive right is con-  
3 cerned, to the extent and subject to such conditions relating to such  
4 making, using or selling of the patented invention or to the patent  
5 as he may choose, subject to the provisions of this title.

6 (b) Any condition of any contract for license to make, use or sell  
7 a patented invention, or for the sale or lease of a patented article,  
8 or relating to any such license, sale or lease, shall be void to the ex-  
9 tent that it (1) requires the licensee, purchaser, or lessee to acquire  
10 from the licensor, vendor or lessor or his nominees any articles other  
11 than the patented article, or (2) prohibits the licensee, purchaser or  
12 lessee from using any article not supplied by, or any process not  
13 belonging to, the licensor, vendor or lessor, or restricts the right of  
14 the licensee, purchaser or lessee to use any such article or process or  
15 (3) requires the licensee, purchaser or lessee to assign or otherwise  
16 give control of any invention made by or owned by him to the licensor,  
17 vendor or lessor.

18 (c) In any action for infringement of a patent it shall be a defense  
19 to prove that at the time of the infringement there was in force a  
20 contract, containing a condition declared void by this section, made  
21 by or with the consent of the plaintiff.

22 (d) A condition of a contract shall not be void by reason of para-  
23 graph (b) (1) and (2) if at the time of making the contract the licensor,  
24 vendor or lessor was willing to grant the license or sell or lease the  
25 article on reasonable terms without any such condition and the licen-  
26 see, purchaser or lessee is entitled under the contract upon reasonable  
27 notice to relieve himself of his liability to observe the condition and  
28 substitute therefor a reasonable specified alternative condition.

29 (e) This section shall not render void any contract or condition  
30 with respect to sales agency or exclusive sales agency, or for the supply  
31 of parts, which would be valid without this section.

**Note**

This section brings up the subject of valid and invalid conditions in license agreements. The first paragraph is declaratory of a broad right to grant licenses. The second paragraph (except clause 3 which is new) is an expansion of section 3 of the Clayton Act (15 U. S. C. 14) to apply the licenses as well as to sales or leases and follows decisions of the courts in holding such conditions invalid. The third paragraph states the penalty which has been applied by the courts. The fourth and fifth paragraphs qualify part of the second paragraph.

## § 67. Recording license agreements

1 (a) Every license under a patent or application for patent and  
2 every agreement with respect to the same shall be in writing and shall

3 be recorded in the Patent Office within three months from the execu-  
4 tion thereof as provided by this section. Nothing in this section  
5 shall require the recording of any license or agreement to which the  
6 United States is a party, or which is made solely for the benefit of  
7 the United States, nor shall this section apply to licenses, contracts,  
8 or estoppels as may be created or implied by law or may arise from  
9 the conduct or relationship of the parties.

10 (b) A true and complete copy of the instruments referred to in  
11 paragraph (a) shall be recorded, except that where a uniform type of  
12 agreement, license, or other instrument is employed, the recording  
13 of a copy thereof, together with a statement setting forth the names  
14 of all the parties to any such uniform type of instrument, may be  
15 recorded in lieu of each separate instrument, and an abstract of any  
16 instrument required to be recorded by the provisions of paragraph (a),  
17 showing the date thereof, the nature of the instrument, the names of  
18 all the parties involved therein, the patents or applications involved  
19 or affected thereby, and the nature and scope of any conditions other  
20 than exclusively pecuniary, may be recorded in lieu thereof, under  
21 such rules and regulations as may be prescribed by the Commissioner  
22 of Patents, subject to the filing of a complete copy within three months  
23 from the date that demand for the same is made by the Commissioner  
24 of Patents; upon failure to file such complete copy within the time  
25 specified, the instrument shall be deemed not recorded under para-  
26 graph (a) hereof.

27 (c) Any party to any instrument specified in paragraphs (a) and  
28 (b) hereof may record the same. Where the parties to any such  
29 instrument are residents of the United States only, the grantor or  
30 licensor shall be liable for the recording of the same; where the  
31 parties to such an instrument are residents of the United States and  
32 residents of a foreign country, the residents of the United States  
33 shall be liable for the recording of the same.

34 (d) Licenses and agreements recorded under this section shall not  
35 be open to public examination and inspection unless requested by  
36 the party recording the same, but shall be made available for ex-  
37 amination, copying, and inspection only by duly authorized officers  
38 of the United States Government for governmental purposes only.

39 (e) Failure to record any instrument required to be recorded by  
40 paragraphs (a) of this section, with the intent to conceal any ma-  
41 terial term thereof, shall subject the violator to a penalty of not  
42 more than \$500 for each such offense, and not more than \$25 for  
43 each day for the continuance thereof, which shall accrue to the  
44 United States and may be recovered in a civil action brought by  
45 the United States.

45 (f) If any instrument required to be recorded by this section is  
46 not recorded as provided herein, no suit based on the agreement or  
47 any default or violation thereof may be maintained during the  
48 period the agreement remains unrecorded nor may any recovery be  
49 had for any default or violation of the agreement during such period.

**Note**

This section brings up the question of recording license agreements and follows in part H. R. 3756, 79th Congress, which passed the House of Representatives April 1, 1946, and in part H. R. 2632, 79th Congress. Other legislative proposals for recording license agreements are: 74th Congress, H. R. 4523, hearings February, December 1935; 77th Congress, S. 2491 and 2730, hearings April 1942, H. R. 7713; 78th Congress, H. R. 109, H. R. 1371, H. R. 3374; 79th Congress, H. R. 97, H. R. 3462, S. 2482; 80th Congress, S. 72.



## CHAPTER 10. GOVERNMENT INTERESTS IN PATENTS

Sec.

- 68. Issue of patents without fees to government officers for inventions used in public service.
- 69. Time for taking action in government applications.
- 70. Inventions of government employees.
- 71. Use of government-owned patents.

### § 68. Issue of patents without fees to government officers for inventions used in public service

1 The Commissioner may grant, subject to the requirements of law,  
2 to any officer, enlisted man, or employee of the Government, except  
3 officers and employees of the Patent Office, a patent without the  
4 payment of any fee, when the head of the department or agency  
5 certifies such invention is used or liable to be used in the public  
6 interest and the applicant in his application states that the invention  
7 described therein, if patented, may be manufactured and used by or  
8 for the Government for governmental purposes without the payment  
9 to him of any royalty thereon, which stipulation shall be included  
10 in the patent.

#### Present statute

Act of Mar. 3, 1883, ch. 143, 22 Stat. 625, amended April 30, 1928, ch. 460, 45 Stat. 467 [35 U. S. C. 45]:

The Commissioner of Patents is authorized to grant, subject to existing law, to any officer, enlisted man, or employee of the Government, except officers and employees of the Patent Office, a patent for any invention of the classes mentioned in section 4886 of the Revised Statutes, without the payment of any fee when the head of the department or independent bureau certifies such invention is used or liable to be used in the public interest: *Provided*, That the applicant in his application shall state 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.

#### Note

Several changes in language are made; the omission of the specific reference to R. S. 4886 broadens the section so as to include design patents.

### § 69. Time for taking action in Government applications.

1 Notwithstanding the provisions of sections 42, 51 and 53 of this  
2 title; the Commissioner may extend the time for taking action to  
3 three years, in the case of any application which has become the prop-  
4 erty of the Government of the United States and with respect to  
5 which the head of the appropriate department or agency of the Gov-  
6 ernment has certified to the Commissioner that the invention dis-

7 closed therein is important to the armament, defense, or security of  
8 the United States.

**Present statute**

See under section 42.

**Note**

This provision, which appears as the last two sentences of R. S. 4894 (see section 42) is made a separate section and rewritten in simpler form.

**§ 70. Inventions of Government employees**

1 The President may prescribe regulations governing the ownership  
2 of the patent rights to inventions made by officers and employees of  
3 the Government during the course of or in consequence of their  
4 employment.

**Note**

This particular provision is not actually necessary, but it is included to bring up the subject.

**§ 71. Use of Government-owned patents**

1 The President may prescribe regulations governing the licensing  
2 or other disposition of any patent owned by or on behalf of the  
3 United States. Licenses shall be nonexclusive, royalty free, and  
4 without conditions, unless otherwise necessary to best serve the  
5 public interest.

**Note**

This section is included to bring up the subject. The most recent legislative proposal is H. R. 5940, 79th Congress, hearings, June 1946.

## CHAPTER 11. INFRINGEMENT OF PATENTS

Sec.

- 72. Infringement of patent.
- 73. Experimental use.
- 74. Use on board ships.
- 75. Purchase from inventor before patent.
- 76. Use by the government.
- 77. Adjustment of royalties in case of government use.

### § 72. Infringement of patent

- 1 Any person who makes, uses or sells any patented machine, manu-
- 2 facture, composition of matter or improvement, or uses any patented
- 3 process or improvement, within the territory of the United States
- 4 and its Territories during the term of the patent therefor without
- 5 authority, and any person who intentionally aids and abets any such
- 6 unauthorized making, using or selling, infringes the patent and shall
- 7 be liable to a civil action for infringement, except as otherwise
- 8 provided in this title.

#### Note

The first part of this section is declaratory only, defining infringement. The second part defines contributory infringement in broad terms, recent legislative proposals on contributory infringement are: 80th Congress, H. R. 5988, hearings May 1948; 81st Congress, S. 2518, H. R. 3366, hearings May, June 1949, H. R. 6436.

### § 73. Experimental use of invention

- 1 The making or using of a patented invention solely for the purpose
- 2 of research or experiment, or for instruction, in connection with the
- 3 patented invention, and not for sale or for the making of anything
- 4 for sale, shall not constitute infringement, without prejudice to the
- 5 rights of the patentee against anyone who makes for sale or sells the
- 6 patented invention which may be subsequently used for such non-
- 7 infringing use.

#### Note

This section proposes to codify the holding of a number of courts that experimental use of a patented invention is not infringement of the patent.

### § 74. Temporary presence in the United States

- 1 No patent shall prevent the use of any invention in any ship,
- 2 vessel, aircraft or land vehicle of any other country entering the
- 3 territory of the United States temporarily or accidentally, and such
- 4 use shall not constitute infringement of any patent, provided such

5 invention is used exclusively for the needs of the ship, vessel, aircraft  
6 or land vehicle and is not sold in or used for the manufacture of any-  
7 thing to be sold in or exported from the United States.

**Note**

It has been held by the Supreme Court that use of a patented invention on board a foreign ship does not infringe a patent. This section codifies this principle and follows the requirement of the International Convention for the Protection of Industrial Property.

**§ 75. Purchase from inventor before patent**

1 Every person who purchases from the inventor or his assigns, or  
2 with his knowledge and consent constructs any newly invented  
3 machine, or other patentable article, prior to the grant of a patent,  
4 or who sells or uses one so constructed, shall have the right to use,  
5 and vend to others to be used, the specific thing so made or pur-  
6 chased, without liability therefor.

**Present statute**

Sec. 4899, Revised Statutes of 1874 [35 U. S. C. 48]:

Every person who purchases of the inventor, or discoverer, or with his knowledge and consent constructs any newly invented or discovered machine, or other patentable article, prior to the application by the inventor or discoverer for a patent, or who sells or uses one so constructed, shall have the right to use, and vend to others to be used, the specific thing so made or purchased, without liability therefor.

**Note**

"Prior to the application for patent" is changed to "prior to the grant of a patent."

**§ 76. Use by the government**

1 The government of the United States may make or use any patented  
2 invention at any time for governmental purposes and any person  
3 authorized by the government may make and use such patented in-  
4 vention for governmental purposes or for sale for governmental pur-  
5 poses, but the patentee shall be entitled to receive a reasonable com-  
6 pensation for any such making, using or selling. Authorization or  
7 consent of the government may be given by or under the authority  
8 of the head of any government department or agency, either before or  
9 after the making, using or selling, and may be given to any person  
10 whether or not he is authorized by the patentee to make, use or sell  
11 the invention.

12 The compensation due the patentee may be made upon such terms  
13 as may be agreed upon by the patentee and the department or agency  
14 involved, or as may be determined by suit in the Court of Claims, or  
15 as specified in sections 38 or 77 of this title in cases coming within  
16 these sections. The United States shall be entitled to avail itself of

17 any defense that may be raised by a defendant in an action for patent  
 18 infringement and, in addition, shall not be liable if the invention has  
 19 been fully recorded by or tried by or on behalf of any government  
 20 department or agency before the invention thereof by the patentee  
 21 or the inventor from whom he derives title.

#### Note

Section 1498 of Title 28, U. S. Code, provides for suit in the Court of Claims for compensation for use of a patented invention by or for the United States. The present section, which is not intended to replace 28 U. S. C. 1498, in the first paragraph defines the right of the United States to use any patented invention in positive terms, rather than negatively as is now the case. The second paragraph adds the special defense for the Government previously proposed: 76th Congress, H. R. 6877, hearings June 1939, H. R. 8445, 9199 and 9367, hearings March, June 1940, S. 2600; 80th Congress, S. 1340; H. R. 3929, hearings February and April 1948; 81st Congress, S. 1046, H. R. 2965.

#### § 77. Adjustment of royalties in case of government use

1 (a) Whenever an invention, either patented or unpatented, shall  
 2 be manufactured, used, sold, or otherwise disposed of for the United  
 3 States, with license from the patentee or anyone having the right  
 4 to grant licenses thereunder, and such license includes provisions for  
 5 the payment of royalties or like charges believed to be unreasonable  
 6 or excessive by the head of the department or agency of the Govern-  
 7 ment which has ordered such manufacture, use, sale, or other dis-  
 8 position, the head of the department or agency of the Government  
 9 concerned, in behalf of such agency and the Government as a whole,  
 0 shall give written notice of such fact to all known parties having a  
 1 beneficial interest in such royalty or like charge, whether as payors  
 2 or payees thereof. Within a reasonable time after the effective date  
 3 of such notice, and in no event in less than thirty days, the head of  
 4 the department or agency of the Government issuing such notice  
 5 shall by order, directed to all parties to whom notice shall have  
 6 been given, or who shall be found to have an interest in such pro-  
 7 ceeding, fix and specify such rates or amounts, if any, of such roy-  
 8 alties or like charges as he shall determine are fair and just, taking  
 9 into account all defenses available to a defendant in a patent in-  
 0 fringement action and such other conditions as may be determined  
 1 to be appropriate by reason of governmental procurement as con-  
 2 trasted with nongovernmental procurement, and shall authorize the  
 3 payment thereof, if any be allowed, by any payor to any payee on  
 4 account of such manufacture, use, sale, or other disposition. Any party  
 5 to whom such notice is given, if he so requests within thirty days from  
 6 and after the effective date of such notice, may, at such time as may  
 7 be fixed by the head of such department or agency, present in writing

28 or in person any facts or circumstances which may, in his opinion,  
29 have a bearing upon the rates or amounts of such royalties or like  
30 charges, if any, to be determined, fixed, and specified in view of the  
31 conditions aforesaid, and any order fixing and specifying the rates  
32 or amounts of such royalties or like charges, if any, shall be issued  
33 by the head of such department or agency within a reasonable time  
34 after such presentation. After the effective date of the notice, any  
35 payor affected by the notice may continue to collect royalties or  
36 like charges payable by or for the United States on account of such  
37 manufacture, use, sale, or other disposition of the invention, but all  
38 such royalties or charges shall be segregated and safely kept by such  
39 payor and shall not, until issuance of the order herein provided, be  
40 paid over to any payee of such royalties or like charges. After issuance  
41 of such order, any payor thereunder, unless otherwise directed in the  
42 order, may continue to collect royalties or other charges as afore-  
43 said, but shall not pay over to any payee affected by the order any  
44 such royalties or other charges in any amount or at a rate in excess  
45 of that fixed and specified by the order and shall refund any such  
46 excess to the United States in such manner as directed by the order  
47 The payee of such royalty or like charge shall not have any remedy  
48 by way of suit, set-off, or other legal action against the payor for the  
49 payment of any additional royalties or like charges foreclosed by  
50 such order, or for damages for breach of contract or otherwise, but  
51 such party's sole and exclusive remedy, except as to the recovery  
52 of the amounts fixed and specified in said order, shall be as provided  
53 in paragraph (b) hereof. The notice and order provided for herein  
54 shall be mailed to the last known address of all parties to whom  
55 the same shall be directed and such notice shall be effective upon  
56 receipt or five days after the mailing thereof, whichever date is  
57 the earlier.

58 (b) Any party entitled to receive such royalties or like charges,  
59 claiming to be aggrieved by any order issued pursuant to paragraph  
60 (a) hereof, may institute suit against the United States in the Court  
61 of Claims or in the district courts of the United States insofar as  
62 such courts may have concurrent jurisdiction with the Court of  
63 Claims to recover such sum, if any, as when added to the royalties  
64 or other charges fixed and specified in such order shall constitute fair  
65 and just compensation to such party for the manufacture, use, sale,  
66 or other disposition for the United States of the invention or inven-  
67 tions within the purview of the order, taking into consideration all  
68 of the circumstances set forth for the determination of such royalties  
69 in paragraph (a) hereof. In any such suit the United States may  
70 avail itself of any and all defenses, general and special, that might

71 be pleaded by a defendant in an action for patent infringement, or  
72 any other defense, general or special, which might preclude the right  
73 of such party to claim, or which might limit the rate or amount of,  
74 a royalty or other like charge.

75 (c) The head of any department or agency of the Government  
76 which has ordered the manufacture, use, sale, or other disposition of  
77 an invention, whether patented or unpatented, and whether or not  
78 an order has been issued in connection therewith pursuant to para-  
79 graph (a) hereof, is authorized and empowered to enter into an agree-  
80 ment, before suit against the United States has been instituted, with  
81 the owner of, or a party entitled to receive a royalty or like charge  
82 under such invention, in full settlement and compromise of any claim  
83 against the United States accruing to such owner or party under the  
84 provisions of this section or any other law by reason of such manufac-  
85 ture, use, sale, or other disposition, and for compensation to be paid  
86 to such owner or party based upon future manufacture, use, sale, or  
87 other disposition of said invention. The head of any department or  
88 agency of the Government which has entered into an agreement  
89 under the provisions of this section is authorized and empowered to  
90 enter into supplemental agreements modifying, amending, or revok-  
91 ing such agreement as the equities of changed circumstances may  
92 warrant, any other law to the contrary notwithstanding.

93 (d) Whenever a reduction in the rates or amounts of royalties of  
94 like charges is effected by order, pursuant to paragraph (a) hereof,  
95 or by compromise or settlement, pursuant to paragraph (c) hereof,  
96 such reduction shall inure to the benefit of the Government either  
97 by way of a corresponding reduction in the contract price to be paid  
98 directly or indirectly for such manufacture, use, sale, or other dis-  
99 position of such invention, or by way of refund to the Treasury of  
100 the United States by the payor of such royalties or like charges  
101 insofar as the same may have been foreclosed from payment thereof  
102 to the payee.

103 (e) The head of the department or agency of the Government  
104 concerned is further authorized, in his discretion and under such rules  
105 and regulations as he may prescribe, to delegate and provide for the  
106 delegation of any power and authority conferred by this section to  
107 such qualified and responsible officers, boards, agents, or persons  
108 as he may designate or appoint.

109 (f) This section shall apply to all royalties or like charges directly  
110 or indirectly charged or chargeable to the United States for any  
111 supplies, equipment, or materials to be delivered to or for the Gov-  
112 ernment from and after the effective date of the notice provided for  
113 in paragraph (a) hereof and shall also apply to all royalties or like

114 charges charged or chargeable directly or indirectly to the United  
 115 States for supplies, equipment or materials delivered to or for the  
 116 Government prior to the date of such notice insofar as such royalties  
 117 or like charges have not been paid to the payee thereof prior to the  
 118 effective date of such notice.

119 (g) The head of each department or agency of the Government  
 120 may issue such rules and regulations and require such information  
 121 as may be necessary and proper to carry out the provisions of this  
 122 section. The provisions of section 10 (1) of an Act approved July 2,  
 123 1926 (44 Stat. 787), as amended, and title XIII of Public Law 507,  
 124 Seventy-seventh Congress, shall be applicable to the payor and payee  
 125 of any royalty or like charge for an invention, whether patented or  
 126 unpatented, manufactured, used, sold, or otherwise disposed of for  
 127 the United States, and the term "defense contract" as used in said  
 128 Act shall mean and include an agreement for the payment of royalty  
 129 or like charge regardless of the date of such agreement, under or by  
 130 virtue of which any royalty or like charge is directly or indirectly  
 131 paid by the Government or included within the contract price for  
 132 property sold to or manufactured for the Government.

#### Present statute

Act of Oct. 31, 1942, ch. 634, 56 Stat. 1013 [35 U. S. C. 89-96]:

SECTION 1. To aid in the successful prosecution of the War, whenever an invention, whether patented or unpatented, shall be manufactured, used, sold, or otherwise disposed of for the United States, with license from the owner thereof or anyone having the right to grant licenses thereunder, and such license includes provisions for the payment of royalties the rates or amounts of which are believed to be unreasonable or excessive by the head of the department or agency of the Government which has ordered such manufacture, use, sale, or other disposition, the head of the department or agency of the Government concerned shall give written notice of such fact to the licensor and to the licensee. Within a reasonable time after the effective date of said notice, in no event less than ten days, the head of the department or agency of the Government concerned, shall by order fix and specify such rates or amounts of royalties, if any, as he shall determine are fair and just, taking into account the conditions of wartime production, and shall authorize the payment thereof by the licensee to the licensor on account of such manufacture, use, sale, or other disposition: *Provided, however,* That the licensee or licensor, if he so requests within ten days from and after the effective date of said notice, may within thirty days from the date of such request present in writing or in person any facts or circumstances which may, in his opinion, have a bearing upon the rates or amounts of royalties, if any, to be determined, fixed and specified as aforesaid, and any order fixing and specifying the rates and amounts of royalties shall be issued within a reasonable time after such presentation. Such licensee shall not after the effective date of said notice pay to the licensor, nor charge directly or indirectly to the United States a royalty, if any, in excess of that specified in said order on account of such manufacture, use, sale, or other disposition. The licensor shall not have any remedy by way of suit, set-off, or other legal action against the licensee for the payment of any additional royalty remaining unpaid, or damages for breach of contract or otherwise, but such licensor's sole and exclusive remedy, except as to the recovery of royalties fixed in said order, shall be as provided in section 2 hereof. Written notice as provided herein shall be mailed to the last known address of

the licensor and licensee and shall be effective upon receipt or five days after the mailing thereof, whichever date is the earlier.

SEC. 2. Any licensor aggrieved by any order issued pursuant to section 1 hereof, fixing and specifying the maximum rates or amounts of royalties under a license issued by him, may institute suit against the United States in the Court of Claims, or in the District Courts of the United States insofar as such courts may have concurrent jurisdiction with the Court of Claims, to recover such sum, if any, as, when added to the royalties fixed and specified in such order, shall constitute fair and just compensation to the licensor for the manufacture, use, sale, or other disposition of the licensed invention for the United States, taking into account the conditions of wartime production. In any such suit the United States may avail itself of any and all defenses, general or special, that might be pleaded by a defendant in an action for infringement as set forth in title sixty of the Revised Statutes, or otherwise.

SEC. 3. The head of any department or agency of the Government which has ordered the manufacture, use, sale, or other disposition of an invention, whether patented or unpatented, and whether or not an order has been issued in connection therewith pursuant to section 1 hereof, is authorized and empowered to enter into an agreement, before suit against the United States has been instituted, with the owner or licensor of such invention, in full settlement and compromise of any claim against the United States accruing to such owner or licensor under the provisions of this Act, or any other law by reason of such manufacture, use, sale, or other disposition, and for compensation to be paid such owner or licensor based upon future manufacture, use, sale, or other disposition of said invention.

SEC. 4. Whenever a reduction in the rates or amounts of royalties is effected by order, pursuant to section 1 hereof, or by compromise or settlement, pursuant to section 3 hereof, such reduction shall inure to the benefit of the Government by way of a corresponding reduction in the contract price to be paid directly or indirectly for such manufacture, use, sale, or other disposition of such invention, or by way of refund if already paid to the licensee.

SEC. 5. The head of the department or agency of the Government concerned is further authorized, in his discretion and under such rules and regulations as he may prescribe, to delegate and provide for the delegation of any power and authority conferred by this Act to such qualified and responsible officers, boards, agents, or persons as he may designate or appoint.

SEC. 6. For the purposes of this Act, the manufacture, use, sale, or other disposition of an invention, whether patented or unpatented, by a contractor, a subcontractor, or any person, firm, or corporation for the Government and with the authorization or consent of the Government shall be construed as manufacture, use, sale, or other disposition for the United States and for the purposes of the Act of June 25, 1910, as amended (40 Stat. 705; 35 U. S. C. 68), the use or manufacture of an invention described in and covered by a patent of the United States by a contractor, a subcontractor, or any person, firm, or corporation for the Government and with the authorization or consent of the Government, shall be construed as use or manufacture for the United States.

SEC. 7. This Act shall apply to all royalties directly or indirectly charged or chargeable to the United States for any supplies, equipment, or materials to be delivered to or for the Government from and after the effective date of the notice provided for in section 1 hereof. This Act shall also apply to all royalties charged or chargeable directly or indirectly to the United States for supplies, equipment, or materials already delivered to or for the Government which royalties have not been paid to the licensor prior to the effective date of the notice provided for in section 1 hereof. Sections 1 and 2 of this Act shall remain in force only during the continuance of the present war and for six months after the termination thereof, except that as to rights accrued or liabilities incurred prior to termination thereof, the provisions of this Act shall be treated as remaining in force and effect for the purpose of settling, sustaining, qualifying, or defeating any suit or claim hereunder.

SEC. 8. The head of each department or agency of the Government may issue such rules and regulations and require such information as may be necessary and proper to carry out the provisions of this Act. The provisions of section 10 (1) of an Act approved July 2, 1926 (44 Stat. 787), as amended, and Title XIII of Public Law 507, Seventy-seventh Congress, shall be applicable to the

owner, licensor, or licensee of an invention, whether patented or unpatented, manufactured, used, sold, or otherwise disposed of for the United States, and the term "defense contract" as used in said Act shall mean and include an agreement for the payment of royalty, regardless of the date of such agreement, under or by virtue of which royalty is directly or indirectly paid by the Government or included within the contract price for property sold to or manufactured for the Government.

Sec. 9. Nothing herein contained shall be deemed to preclude the applicability of section 403 of Public Law 528, Seventy-seventh Congress, as the same may be heretofore or hereafter amended so far as the same may be applicable.

#### **Note**

This section follows the present act and the bills H. R. 2477 and S. 956, 81st Congress, with a few changes.

## CHAPTER 12. REMEDIES FOR INFRINGEMENT OF PATENT, AND OTHER ACTIONS

Sec.

- 78. Remedies for infringement of patent.
- 79. Defenses, presumption of validity.
- 80. Injunction.
- 81. Damages.
- 82. Attorneys fees.
- 83. Limitation on damages, time.
- 84. Limitation on damages, marking and notice.
- 85. Suit for infringement when a claim may be invalid.
- 86. Notice of patent suits.
- 87. Interfering patents.
- 88. False marking.

### § 78. Remedies for infringement of patent

- 1 Any patentee, his executors, administrators, and assigns, whether
- 2 of the whole or any sectional interest in the patent, shall have remedy
- 3 for violation of any right secured by patent by a civil action for
- 4 infringement.

#### Present statutes

Sec. 4919, Revised Statutes of 1874 [35 U. S. C. 67]:

Damages for the infringement of any patent may be recovered by action on the case, in the name of the party interested, either as patentee, assignee, or grantee. And whenever in any such action a verdict is rendered for the plaintiff, the court may enter judgment thereon for any sum above the amount found by the verdict as the actual damages sustained, according to the circumstances of the case, not exceeding three times the amount of such verdict, together with the costs.

Sec. 4921, Revised Statutes of 1874, amended (1) Mar. 3, 1897, sec. 6, ch. 391, 29 Stat. 694, (2) Feb. 18, 1922, sec. 8, ch. 58, 42 Stat. 392, (3) Aug. 4, 1946, sec. 1, ch. 726, 60 Stat. 778 [35 U. S. C. 70]:

The several courts vested with jurisdiction of cases arising under the patent laws shall have power to grant injunctions according to the course and principles of courts of equity, to prevent the violation of any right secured by patent, on such terms as the court may deem reasonable; and upon a judgment being rendered in any case for an infringement the complainant shall be entitled to recover general damages which shall be due compensation for making, using, or selling the invention, not less than a reasonable royalty therefor, together with such costs, and interest, as may be fixed by the court. The court may in its discretion award reasonable attorney's fees to the prevailing party upon the entry of judgment on any patent case.

The court is authorized to receive expert or opinion evidence upon which to determine in conjunction with any other evidence in the record, due compensation for making, using, or selling the invention, and such expert or opinion evidence is declared to be competent and admissible subject to the general rules of evidence applicable thereto.

The court shall assess said damages, or cause the same to be assessed, under its direction and shall have the same power to increase the assessed damages, in its

discretion, as is given to increase the damages found by verdicts in actions in the nature of actions of trespass upon the case; but recovery shall not be had for any infringement committed more than six years prior to the filing of the complaint in the action. And it shall be the duty of the clerks of such courts within one month after the filing of any action, suit, or proceeding arising under the patent laws to give notice thereof in writing to the Commissioner of Patents, setting forth in order so far as known the names and addresses of the litigants, names of the inventors, and the designating number or numbers of the patent or patents upon which the action, suit, or proceeding has been brought, and in the event any other patent or patents be subsequently included in the action, suit, or proceeding by amendment, answer, cross bill, or other pleading, the clerk shall give like notice thereof to the Commissioner of Patents, and within one month after the decision is rendered or a judgment issued the clerk of the court shall give notice thereof to the Commissioner of Patents, and it shall be the duty of the Commissioner of Patents on receipt of such notice forthwith to endorse the same upon the file wrapper of the said patent or patents, and to incorporate the same as a part of the contents of said file or file wrapper.

This Act shall take effect upon approval and shall apply to pending causes of action in which the taking of the testimony has not been concluded: *Provided, however*, That pending causes of action in which the taking of the testimony has been concluded are to be governed by the statute in force at the time of approval of this Act as if such statute had not been amended.

#### Notes

R. S. secs. 4919 and 4921 deal with suits for infringement of patents, damages, injunctions and matters of that kind. These sections need much revision in language in view of the changes in court proceedings since they were first adopted. Section 4919 deals with actions at law on the case, and section 4921 with suits in equity as well as with other matters. Since there is now only one form of action, the two sections need consolidation. In doing so the sections have been split into a number of different sections, 80, 81, 82, 83, and 86.

The present section serves as an introduction or preamble to the following sections.

The transitory provision in the Act of Aug. 1, 1946, is omitted as its effect is believed passed.

#### § 79. Defenses; presumption of validity

1 In any action for infringement the defendant, in addition to  
 2 absence of infringement or liability for infringement may plead as a  
 3 defense the invalidity of the patent or any claim thereof on any ground  
 4 specified in chapter 2 as a condition for patentability, or for failure  
 5 to comply with the requirement of section 28 of this title for a com-  
 6 plete description of the invention; or any fact or act made a defense  
 7 by this title.

8 A patent shall be presumed to be valid unless and until it has been  
 9 held invalid by the final judgment of a court of competent jurisdiction  
 10 from which no appeal is or can be taken and the burden of establish-  
 11 ing invalidity by convincing proof shall rest on any person asserting  
 12 invalidity of the patent.

**Present statute**

Sec. 4920, Revised Statutes of 1874, amended (1) Mar. 3, 1897, sec. 2, ch. 391, 29 Stat. 692, (2) Aug. 5, 1939, sec. 1, ch. 450, 53 Stat. 1212 [35 U. S. C. 69]:

In any action for infringement the defendant may plead the general issue, and, having given notice in writing to the plaintiff or his attorney thirty days before, may prove on trial any one or more of the following special matters:

First. That for the purpose of deceiving the public the description and specification filed by the patentee in the Patent Office was made to contain less than the whole truth relative to his invention or discovery, or more than is necessary to produce the desired effect; or,

Second. That he had surreptitiously or unjustly obtained the patent for that which was in fact invented by another, who was using reasonable diligence in adapting and perfecting the same; or,

Third. That it has been patented or described in some printed publication prior to his supposed invention or discovery thereof, or more than one year prior to his application for a patent therefor; or,

Fourth. That he was not the original and first inventor or discoverer of any material and substantial part of the thing patented; or,

Fifth. That it had been in public use or on sale in this country for more than one year before his application for a patent, or had been abandoned to the public.

And in notices as to proof of previous invention, knowledge, or use of the thing patented, the defendant shall state the names of the patentees and the dates of their patents, and when granted, and the names and residences of the persons alleged to have invented or to have had the prior knowledge of the thing patented, and where and by whom it had been used; and if any one or more of the special matters alleged shall be found for the defendant, judgment shall be rendered for him with costs. And the like defenses may be pleaded in any suit in equity for relief against an alleged infringement; and proofs of the same may be given upon like notice in the answer of the defendant, and with the like effect.

**Note**

Sec. 4920 has been superseded in part by the Federal Rules of Civil Procedure, see notes under Rule 8. This section is omitted and replaced by a brief paragraph specifying the defenses to infringement suits. The second paragraph specifies the presumption of validity of patents.

**§ 80. Injunction**

- 1 The several courts vested with jurisdiction of cases arising under
- 2 this title shall have power to grant injunctions to prevent the viola-
- 3 tion of any right secured by patent, according to the course and prin-
- 4 ciples of courts of equity, on such terms as the court may deem
- 5 reasonable.

**Present statute**

See under section 78.

**Note**

This section is substantially the same as the provision which opens R. S. 4921.

**§ 81. Damages**

- 1 Upon a verdict or judgment being rendered in any action for in-
- 2 fringement the complainant shall be entitled to recover damages, or
- 3 general damages which shall be due compensation for making, using,
- 4 or selling the invention, not less than a reasonable royalty therefor,
- 5 together with such costs, and interest, as may be fixed by the court.

6 When not found by a jury, the court shall assess said damages, or  
 7 cause the same to be assessed, under its direction and the court is  
 8 authorized to receive expert or opinion evidence upon which to  
 9 determine in conjunction with any other evidence in the record, due  
 10 compensation for making, using, or selling the invention, and such  
 11 expert or opinion evidence is declared to be competent and admissible  
 12 subject to the general rules of evidence applicable thereto.

13 Whenever a verdict or judgment is rendered for the plaintiff, the  
 14 court may enter judgment, according to the circumstances of the  
 15 case, for any sum above the amount found as damages, not exceeding  
 16 three times such amount, together with the costs.

**Present statute**

See under section 78.

**Note**

This section attempts to consolidate the provisions relating to damages in R. S. 4919 and 4921.

**§ 82. Attorney's fees**

1 The court may in its discretion award reasonable attorney's fees  
 2 in exceptional cases, to the prevailing party upon the entry of judg-  
 3 ment.

**Present statute**

See under section 78.

**Note**

The words "in exceptional cases" have been added to the provision in R. S. 4921 to bring out the intention in the original enactment of this clause, and the interpretation by the courts.

**§ 83. Limitation on damages; time**

1 No recovery shall be had for any infringement committed more  
 2 than six years prior to the filing of the complaint in the action.

**Present statute**

See under section 78.

**Note**

This is identical with the provision in R. S. 4921.

**§ 84. Limitation on damages, marking and notice**

1 It shall be the duty of all patentees and their assigns and legal  
 2 representatives, and of all persons making or vending any patented  
 3 article for or under them, to give sufficient notice to the public that  
 4 the same is patented; either by fixing thereon the word "patent,"  
 5 together with the number of the patent, or when, from the character  
 6 of the article, this can not be done, by fixing to it, or to the package  
 7 wherein one or more of them is included, a label containing the like

8 notice, and in any suit for infringement by the party failing so to  
 9 mark, or in any suit for infringement of a patent under which no  
 10 articles have been manufactured or sold (marked as above required),  
 11 no damages shall be recovered by the plaintiff, except on proof that  
 12 the defendant was duly notified of the infringement and continued  
 13 to infringe after such notice.

**Present statute**

Sec. 4900, Revised Statutes of 1874, amended Feb. 7, 1927, ch. 67, 44 Stat. 1058 [35 U. S. C. 49]:

It shall be the duty of all patentees and their assigns and legal representatives, and of all persons making or vending any patented article for or under them, to give sufficient notice to the public that the same is patented; either by fixing thereon the word "patent," 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 inclosed, a label containing the like notice: *Provided, however,* That with respect to any patent issued prior to April 1, 1927, it shall be sufficient to give such notice in the form following; viz: "Patented," together with the day and year the patent was granted; and in any suit for infringement by the party failing so to mark, no damages shall be recovered by the plaintiff, except on proof that the defendant was duly notified of the infringement and continued, after such notice, to make, use, or vend the article so patented.

**Note**

The proviso is omitted as being temporary in character and no longer of any import. A clause is added requiring actual notice in cases of no manufacture by the patentee.

**§ 85. Suit for infringement when a claim may be invalid**

1 Whenever, through inadvertence, accident, or mistake and without  
 2 any willful default or intent to defraud or mislead the public, any  
 3 claim of a patent is invalid, the patentee, his executors, administra-  
 4 tors, and assigns, whether of the whole or any sectional interest in  
 5 the patent, may maintain an action for the infringement of any  
 6 claim of the patent which may be valid, notwithstanding the invalid  
 7 claim. But in every such case in which a judgment or decree shall  
 8 be rendered for the plaintiff no costs shall be recovered unless a proper  
 9 disclaimer of the invalid claim has been entered at the Patent Office  
 10 before the commencement of the suit.

**Present statute**

Sec. 4922, Revised Statutes of 1874 [35 U. S. C. 71]:

Whenever, through inadvertence, accident, or mistake and without any willful default or intent to defraud or mislead the public, a patentee has, in his specification, claimed to be the original and first inventor or discoverer of any material or substantial part of the thing patented, of which he was not the original and first inventor or discoverer, every such patentee, his executors, administrators, and assigns, whether of the whole or any sectional interest in the patent, may maintain a suit at law or in equity, for the infringement of any part thereof, which was bona fide his own, if it is a material and substantial part of the thing patented, and definitely distinguishable from the parts claimed without right, notwithstanding the specifications may embrace more than that of which the

patentee was the first inventor or discoverer. But in every such case in which a judgment or decree shall be rendered for the plaintiff no costs shall be recovered unless the proper disclaimer has been entered at the Patent Office before the commencement of the suit. But no patentee shall be entitled to the benefits of this section if he has unreasonably neglected or delayed to enter a disclaimer.

**Note**

The question of delay in disclaiming is eliminated and disclaimers are confined to disclaiming an entire claim, see section 60.

**§ 86. Notice of patent suits**

1 It shall be the duty of the clerks of the courts of the United States  
 2 within one month after the filing of any action, suit, or proceeding  
 3 arising under the patent laws, to give notice thereof in writing to the  
 4 Commissioner of Patents, setting forth in order so far as known the  
 5 names and addresses of the parties, names of the inventors, and the  
 6 designating number or numbers of the patent or patents upon which  
 7 the action, suit, or proceeding has been brought, and in the event  
 8 any other patent or patents be subsequently included in the action,  
 9 suit, or proceeding by amendment, answer, cross bill, or other plead-  
 10 ing, the clerk shall give like notice thereof to the Commissioner of  
 11 Patents, and within one month after the decision is rendered or a  
 12 judgment issued the clerk of the court shall give notice thereof to  
 13 the Commissioner of Patents, and it shall be the duty of the Com-  
 14 missioner of Patents, on receipt of such notice forthwith to endorse  
 15 the same upon the file wrapper of the said patent or patents, and to  
 16 incorporate the same as a part of the contents of said file or file  
 17 wrapper.

**Present statute**

See under section 78.

**Note**

This is the last sentence of R. S. 4921.

**§ 87. Interfering patents**

1 Whenever there are interfering patents, including for the purpose  
 2 of this section patents so related that the invention claimed in one  
 3 patent cannot be made, used or sold without infringing the other  
 4 patent, either patentee may have relief against the interfering patentee  
 5 by civil action, and the court may adjudge the question of infringe-  
 6 ment, and the validity of either or both of the patents.

**Present statute**

Sec. 4918, Revised Statutes of 1874, amended Mar. 2, 1927, sec. 12, ch. 273,  
 44 Stat. 1337 [35 U. S. C. 66]:

Whenever there are interfering patents, any person interested in any one of them, or in the working of the invention claimed under either of them, may have relief against the interfering patentee, and all parties interested under him, by suit in equity against the owners of the interfering patent; and the court, on

notice to adverse parties, and other due proceedings had according to the course of equity, may adjudge and declare either or both of the patents void in whole or in part, upon any ground, or inoperative, or invalid in any particular part of the United States, according to the interest of the parties in the patent or the invention patented. But no such judgment or adjudication shall affect the right of any person except the parties to the suit and those deriving title under them subsequent to the rendition of such judgment.

#### Note

The present statute would be of no value with the changes in interferences of sections 44 and 52 and has been broadened to include the situation of dominant and subordinate patents.

#### § 88. False marking

- 1     Whoever without the consent of the patentee, marks upon, or
- 2     affixes to or uses in advertising associated with, anything made, used,
- 3     or sold by him for which he has not obtained a patent, the name or
- 4     any imitation of the name of the patentee, or the words "patent,"
- 5     "patentee" or the like with the intent of counterfeiting or imitating
- 6     the mark of the patentee, or of deceiving the public and inducing
- 7     them to believe that the thing was made or sold by or with the con-
- 8     sent of the patentee; or
- 9     Whoever marks upon, or affixes to or uses in advertising associated
- 10    with, any unpatented article, the word "patent" or any word im-
- 11    porting that the same is patented, for the purpose of deceiving the
- 12    public; or
- 13    Whoever marks upon, or affixes to or uses in advertising associated
- 14    with, any article, the words "patent applied for," "patent pending"
- 15    or any word importing that an application for patent has been made,
- 16    when no application for patent has been made, or if made is not
- 17    pending, for the purpose of deceiving the public—
- 18    Shall be fined not more than \$500 for every such offense.

#### Present statute

Sec. 4901, Revised Statutes of 1874 [35 U. S. C. 50]:

Every person who, in any manner, marks upon anything made, used, or sold by him for which he has not obtained a patent, the name or any imitation of the name of any person who has obtained a patent therefor without the consent of such patentee, or his assigns or legal representatives; or

Who, in any manner, marks upon or affixes to any such patented article the word "patent" or "patentee," or the words "letters patent" or any word of like import, with intent to imitate or counterfeit the mark or device of the patentee, without having the license or consent of such patentee or his assigns or legal representatives; or

Who, in any manner, marks upon or affixes to any unpatented article the word "patent," or any word importing that the same is patented, for the purpose of deceiving the public, shall be liable, for every such offense, to a penalty of not less than \$100, with costs; one-half of said penalty to the person who shall sue for the same, and the other to the use of the United States, to be recovered by suit in any district court of the United States within whose jurisdiction such offense may have been committed.

**Note**

The first two paragraphs of the present statute are consolidated, a new paragraph relating to false marking of "patent applied for" is added and false advertising is included in all the offenses. The archaic informer action is eliminated and the minimum fine is replaced by a maximum.

## CHAPTER 13. PLANTS

Sec.

89. Patents for plants.

90. Description, claim.

91. Grant.

92. Assistance of Department of Agriculture.

### § 89. Patents for plants

1 Any person who has invented or discovered and asexually  
2 reproduced any distinct and new variety of plant, other than a  
3 tuber-propagated plant, may obtain a patent therefor, subject to the  
4 conditions and requirements of this title.

5 The provisions of this title relating to patents, other than for  
6 designs, shall apply to patents for plants except as otherwise provided.

#### Present statute

See under section 21.

#### Note

The provision in R. S. 4886 (see section 21) is made a separate section.

### § 90. Description, claim

1 No plant patent shall be declared invalid on the ground of non-  
2 compliance with section 28 of this title if the description is made as  
3 complete as is reasonably possible.

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

#### Present statute

See under section 28.

#### Note

The first paragraph is the provision in R. S. 4888 (see section 28). The second paragraph is not in the statute but represents the actual practice.

### § 91. Grant

1 In the case of a plant patent the grant shall be of the exclusive right  
2 to asexually reproduce the plant.

#### Present statute

See under section 56.

#### Note

This provision is from R. S. 4884 (see section 56) but in making it a separate section its interpretation is clarified.

## § 92. Assistance of Department of Agriculture

1 The President may by Executive order direct the Secretary of  
2 Agriculture (1) to furnish the Commissioner of Patents such available  
3 information of the Department of Agriculture, or (2) to conduct  
4 through the appropriate bureau or division of the department such  
5 research upon special problems, or (3) to detail to the Commissioner  
6 of Patents such officers and employees of the department, as the  
7 Commissioner may request for the purposes of carrying into effect  
8 the provision of this title relating to plants.

**Present statute**

Sec. 4, act of May 23, 1930, ch. 312, 46 Stat. 376 [35 U. S. C. 56a]: •

The President may by Executive order direct the Secretary of Agriculture (1) to furnish the Commissioner of Patents such available information of the Department of Agriculture, or (2) to conduct through the appropriate bureau or division of the department such research upon special problems, or (3) to detail to the Commissioner of Patents such officers and employees of the department, as the commissioner may request for the purposes of carrying this Act into effect.

**Note**

No change.

## CHAPTER 14. DESIGNS

Sec.

- 93. Patents for designs.
- 94. Specification.
- 95. Right of priority.
- 96. Term.
- 97. Additional remedy for infringement.

### § 93. Patents for designs

- 1 Any person who has invented or designed any new, original and
- 2 ornamental design for an article of manufacture may obtain a patent
- 3 therefor, subject to the conditions and requirements of this title.
- 4 The provisions of this title relating to patents for inventions and
- 5 applications therefor, shall apply to patents for designs except as
- 6 otherwise provided.

#### Present statutes

Sec. 4929, Revised Statutes of 1874, amended (1) May 9, 1902, ch. 783, 32 Stat. 193, (2) Aug. 5, 1939, sec. 1, ch. 450, 53 Stat. 1212 [35 U. S. C. 73, first paragraph]:

Any person who has invented any new, original, and ornamental design for an article of manufacture, not known or used by others in this country before his invention thereof, and not patented or described in any printed publication in this or any foreign country before his invention thereof, or more than one year prior to his application, and not in public use or on sale in this country for more than one year prior to his application, unless the same is proved to have been abandoned, may, upon payment of the fees required by law and other due proceedings had, the same as in cases of inventions or discoveries covered by section 4886, obtain a patent therefor.

Sec. 4933, Revised Statutes of 1874 [35 U. S. C. 73, second paragraph]:

All the regulations and provisions which apply to obtaining or protecting patents for inventions or discoveries not inconsistent with the provisions of this title, shall apply to patents for designs.

#### Note

The list of conditions is omitted as unnecessary in view of the general inclusion of all conditions applying to other patents. Language is changed.

### § 94. Specification

- 1 The specification and claim of a design patent shall be in formal
- 2 terms, referring to the drawing.

#### Note

This section is new in the statute, but represents the actual practice.

**§ 95. Right of priority**

- 1 The period for the right of priority provided for by section 34
- 2 of this title shall be six months in the case of designs.

**Present statute**

See under section 34.

**Note**

This provision is taken from R. S. 4887, second paragraph (see section 34) and made a separate section.

**§ 96. Term of design patent**

- 1 Patents for designs may be granted for the term of three years and
- 2 six months, or for seven years, or for fourteen years, as the applicant
- 3 may, in his application, elect.

**Present statute**

Section 4931, Revised Statutes of 1874 [35 U. S. C. 77]:

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 may, in his application, elect.

**Note**

No change.

**§ 97. Additional remedy for infringement of design patent**

- 1 During the term of a patent for a design, it shall be unlawful for
- 2 any person other than the owner of said patent, without the license
- 3 of such owner, to apply the design secured by such patent, or any
- 4 colorable imitation thereof, to any article of manufacture for the
- 5 purpose of sale, or to sell or expose for sale any article of manufacture
- 6 to which such design or colorable imitation shall, without the license
- 7 of the owner, have been applied. Any person violating the provisions,
- 8 or either of them, of this section, shall be liable in the amount of \$250;
- 9 and in case the total profit made by him from the manufacture or
- 10 sale, as aforesaid, of the article or articles to which the design, or
- 11 colorable imitation thereof, has been applied, exceeds the sum of
- 12 \$250, he shall be further liable for the excess of such profit over and
- 13 above the sum of \$250. And the full amount of such liability may
- 14 be recovered by the owner of the patent, to his own use, by civil
- 15 action in any district court of the United States having jurisdiction
- 16 of the parties.

- 17 Nothing in this section shall prevent, lessen, impeach, or avoid
- 18 any other remedy which any owner of a patent, aggrieved by the
- 19 infringement of the same, may have under the provisions of this
- 20 title, but such owner shall not twice recover the profit made from the
- 21 infringement.

**Present statute**

Act of Feb. 4, 1887, secs. 1 and 2, ch. 105, 24 Stat. 387, 388 [35 U. S. C. 74, 75]:

**SECTION 1.** During the term of letters patent for a design, it shall be unlawful for any person other than the owner of said letters patent, without the license of such owner, to apply the design secured by such letters patent, or any colorable imitation thereof, to any article of manufacture for the purpose of sale, or to sell or expose for sale any article of manufacture to which such design or colorable imitation shall, without the license of the owner, have been applied, knowing that the same has been so applied. Any person violating the provisions, or either of them, of this section, shall be liable in the amount of \$250; and in case the total profit made by him from the manufacture or sale, as aforesaid, of the article or articles to which the design, or colorable imitation thereof, has been applied, exceeds the sum of \$250, he shall be further liable for the excess of such profit over and above the sum of \$250. And the full amount of such liability may be recovered by the owner of the letters patent, to his own use, in any circuit court of the United States having jurisdiction of the parties, either by action at law or upon a bill in equity for an injunction to restrain such infringement.

**Sec. 2.** That nothing in this act contained shall prevent, lessen, impeach, or avoid any remedy at law or in equity which any owner of letters patent for a design, aggrieved by the infringement of the same, might have had if this act had not been passed; but such owner shall not twice recover the profit made from the infringement.

**Note**

A few verbal changes have been made.



## CHAPTER 15. PATENT OFFICE FEES

Sec.

98. Patent fees.

99. Payment of patent fees; return of excess payments.

### § 98. Patent fees

1 The following shall be the rates for patent fees:

2 (a) On filing each original application for a patent, except in design  
3 cases, \$30, and \$1 for each claim presented in excess of twenty.

4 (b) On issuing each original patent, except in design cases, \$30,  
5 and \$1 for each claim in excess of twenty.

6 (c) In design cases: For three years and six months, \$10; for  
7 seven years, \$15; for fourteen years, \$30.

8 (d) On every application for the reissue of a patent, \$30.

9 (e) On filing each disclaimer, \$10.

10 (f) On an appeal for the first time from the primary examiners to  
11 the Board of Appeals, \$25.

12 (g) On filing each petition for the revival of an abandoned applica-  
13 tion for a patent or for the delayed payment of the fee for issuing each  
14 patent, \$10.

15 (h) For certificate of correction of applicant's under section 62, \$10.

16 (i) For deposit of documents for custody in accordance with sec-  
17 tion 39, \$1.

18 (j) For uncertified printed copies of specifications and drawings of  
19 patents (except design patents), 25 cents per copy; for design patents,  
20 10 cents per copy; special rate for libraries specified in section 14 of  
21 this title, \$50 for patents issued in one year.

22 (k) For recording every assignment, agreement, power of attorney,  
23 or other paper not exceeding six pages, \$3; for each additional two  
24 pages or less, \$1; for each additional patent or application included  
25 or involved in one writing, where more than one is so included or  
26 involved, 50 cents additional.

27 (l) For each certificate, \$1.

28 (m) For copies of records, publications, or services furnished by  
29 the Patent Office, not specified above, for which a charge may be  
30 made, such reasonable charge for the same as may be established.

### Present statutes

Sec. 4934 of the Revised Statutes of 1874, amended (1) May 27, 1908, sec. 1,  
part, ch. 200, 35 Stat. 317, 343; (2) June 25, 1910, sec. 2, ch. 414, 35 Stat. 843;  
(3) Feb. 18, 1922, sec. 9, ch. 58, 42 Stat. 389, 393; (4) Feb. 14, 1927, sec. 2, ch.

139, 44 Stat. 1098, 1099; (5) Mar. 2, 1927, sec. 13, ch. 273, 44 Stat. 1335, 1337; (6) Apr. 11, 1930, sec. 3, ch. 132, 46 Stat. 155; (7) June 30, 1932, secs. 308, 309, ch. 314, 47 Stat. 382, 410; (8) Aug. 9, 1939, sec. 3, ch. 619, 53 Stat. 1293 [35 U. S. C. 78]:

The following shall be the rates for patent fees:

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

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

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

On every application for the reissue of a patent, \$30.

On filing each disclaimer, \$10.

On an appeal for the first time from the primary examiners to the Board of Appeals, \$15.

On every appeal from the examiner of interferences to the Board of Appeals, \$25.

For uncertified printed copies of specifications and drawings of patents, 10 cents per copy: *Provided*, That the Commissioner of Patents may supply public libraries of the United States with such copies as published, for \$50 per annum: *Provided further*, That the Commissioner of Patents may exchange copies of United States patents for those of foreign countries.

For copies of records made by the Patent Office, excluding printed copies, 10 cents per hundred words.

For each certificate, 50 cents.

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

For copies of drawings, the reasonable cost of making them.

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.

Sec. 301 (part), appropriation act of July 5, 1946, ch. 541, 60 Stat. 446, 471 [35 U. S. C. 78]:

\* \* \* *Provided*, That hereafter on July 1, 1946, and thereafter 25 cents per copy shall be charged for uncertified copies of specifications and drawings of patents, and 10 cents per copy for design patents and certificates of trade-mark registration.

#### Note

(1) The items are rearranged in a few instances and are lettered for convenient reference.

(2) The obsolete fee for appeal from the examiners of interferences to the Board of Appeals is omitted.

(3) The fee for appeal to the Board of Appeals is changed from \$15 to \$25 in accordance with the bill, S. 2433, which passed the Senate October 17, 1949.

(4) Two provisos have been transferred to separate sections, secs. 13 and 14.

(5) The fee for a certificate is changed from 50 cents to \$1 to correspond to the same fee in the trade-mark statute.

(6) Two new items, (h) and (i) are added to go with sections 39 and 62.

(7) An omnibus item to take care of miscellaneous minor fees is added; in view of this, two items in the present schedule are omitted.

#### § 99. Payment of patent fees; return of excess amounts

1 All patent fees shall be paid to the Commissioner of Patents, who  
2 shall deposit the same in the Treasury of the United States in such  
3 manner as the Secretary of the Treasury shall direct, and the commis-

4 sioner is authorized to pay back any sum or sums of money paid  
5 to him by any person by mistake or in excess of the fee required by  
6 law.

**Present statute**

Sec. 1 (part), deficiency appropriation act of March 6, 1920, ch. 94, 41 Stat. 503; 512 [35 U. S. C. 79]:

Hereafter all patent fees shall be paid to the Commissioner of Patents, who shall deposit the same in the Treasury of the United States in such manner as the Secretary of the Treasury shall direct, and said commissioner is authorized to pay back any sum or sums of money paid to him by any person by mistake or in excess of the fee required by law.

(NOTE.—This enactment appears to supersede secs. 4935, 4936 of the Revised Statutes of 1874 which deal with the same subject.)

**Note**

The original enactment, from which the U. S. C. differs, is followed with slight change.



## CHAPTER 16. MISCELLANEOUS PROVISIONS

Sec.

100. Separability clause.

101. Repeal.

102. Time of taking effect.

### § 100. Separability clause

1 If any provision of this title is declared unconstitutional or the  
2 application thereof to any person or circumstance held invalid, the  
3 validity of the remainder of this title or the application of such pro-  
4 vision to other persons or circumstances shall not be affected.

#### Present statutes

Sec. 6, Act of May 23, 1930, ch. 312, 46 Stat. 376 [35 U. S. C. 326]:

If any provision of this Act is declared unconstitutional or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and the application thereof to other persons or circumstances shall not be affected thereby.

Sec. 1 (adding sec. 6 to Act of July 1, 1940, ch. 501, 54 Stat. 710, Act of Aug. 21, 1941, ch. 393, 55 Stat. 697 [35 U. S. C. 42d]:

If any provision of this Act or of any section thereof or the application of such provision to any person or circumstances shall be held invalid, the remainder of the Act and of such section and application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

Sec. 10, Act of Oct. 31, 1942, ch. 634, 56 Stat. 1013:

If any provision of this Act or the application of any provision to any person or circumstance shall be held invalid, or if any provision of this Act shall be inoperative by its terms, the validity or applicability of the remainder of the Act shall not be affected thereby.

#### Note

Separability clauses appear in the three different patent acts. Only one such clause is included herein and is worded so that it applies to any provision in the entire law.

### § 101. Repeal of prior acts

1 The following acts or parts of acts are hereby repealed:

[Table of acts to be repealed to be inserted.]

### § 102. Time of taking effect

1 (a) This title shall take effect on \_\_\_\_\_ and shall apply to all  
2 applications for patent filed on or after such date and to all patents  
3 granted on such applications. It shall apply to further proceedings  
4 on applications pending on such date and to patents granted on such  
5 applications except as otherwise provided. It shall apply to unex-  
6 pired patents granted prior to such date except as otherwise provided:

7 (b) Section 25 of this title shall not apply to existing patents and  
8 applications pending before the effective date and to patents granted  
9 on such applications.

10 (c) Section 34 of this title, second paragraph, shall not apply to  
11 existing patents.

12 (d) Sections 35 and 36 of this title, insofar as they change the  
13 requirements of existing law shall not apply to existing patents.  
14 The last sentence of section 36 of this title shall apply to existing  
15 patents at the option of the patentee but in such event the restriction  
16 in term shall also apply.

17 (e) Any order of secrecy heretofore issued, and subsisting on the  
18 date of the approval of this act, shall be considered as an order issued  
19 pursuant to section 38 of this title and shall continue in force and  
20 effect for a period of one year from the effective date of this act  
21 unless sooner rescinded as provided herein. Any claim arising under  
22 the acts of which section 38 of this title is amendatory and unsettled  
23 as of the effective date of this act may be presented and determined  
24 pursuant to the provisions of section 38 hereof.

25 (f) Sections 44 and 52 of this title shall not apply to interferences  
26 declared by the Patent Office before the effective date and, with  
27 respect to such interferences, the laws in force prior to the effective  
28 date shall apply as though not repealed, unless all parties to the  
29 interference agree otherwise.

30 (g) Section 57 of this title shall not apply to existing patents but  
31 shall apply to patents granted on applications pending on the effective  
32 date, except that the period of pendency prior to the effective date  
33 shall not be included in the 20-year period specified therein.

34 (h) Section 64 of this title, insofar as it changes existing law, shall  
35 not apply to instruments executed before the effective date and re-  
36 corded within three months from the effective date.

37 (i) Section 65 of this title, insofar as it changes existing law, shall  
38 not apply to transactions entered into before the effective date.

39 (j) Section 66 of this title shall not apply to render void any specific  
40 agreement or condition therein entered into before the effective date  
41 not void when made.

42 (k) Section 67 of this title shall apply to licenses executed prior to  
43 the effective date if they are still in effect on said date but the time  
44 for recording such licenses shall be three months from the effective  
45 date.

46 (l) The period of one year specified in section 22 of this title shall  
47 not apply in the case of applications filed before August 5, 1940, and  
48 patents granted on such applications, and with respect to such applica-  
49 tions, and patents, said period is two years instead of one year.

50 (m) No variety of plant which has been introduced to the public  
51 prior to May 23, 1930, shall be subject to patent.

52 (n) Nothing contained in this title shall operate to nullify any  
53 judicial finding on the validity of any patent by a court of competent  
54 jurisdiction.

55 (o) Nothing in this title shall affect any provision of the Atomic  
56 Energy Act of 1946 (Aug. 1, 1946, ch. 724, 60 Stat. 755).

#### Note

Transitory provisions relating to various sections, and a few other provisions, are collected in one place. Paragraph (l) is the transitory provision in the Act of Aug. 5, 1939, sec. 2, ch. 450, 53 Stat. 1212. Paragraph (m) is the transitory provision in the Act of May 23, 1930, sec. 5, ch. 312, 46 Stat. 376 (35 U. S. C. 32a).



## ADDITIONAL ITEMS

1. Revocation or cancellation of patents.
2. Compulsory licenses.
3. Short term or minor patents.
4. Patents of addition.
5. Maintenance or renewal fees.

### *1. Revocation or Cancellation of Patents*

#### **§ 1. Revocation on motion of Patent Office**

1 The Patent Office may reconsider the grant of a patent and, on  
2 notice to the patentee sent within one year from the date of the  
3 patent and after opportunity for hearing, may cancel any claim  
4 of the patent.

5 If any person notifies the Patent Office of any patents or printed  
6 publications not cited during the prosecution of an application for  
7 patent which may affect the validity of the patent and the Patent  
8 Office shall consider such material if received in sufficient time for  
9 reconsideration of the grant of the patent provided in this section.

#### **§ 2. Revocation on petition of interested person**

1 Any person interested may petition the Commissioner, within one  
2 year from the grant of a patent, to cancel the patent or any claim  
3 thereof on the ground:

4 (a) That the invention is not new or patentable in accordance with  
5 the requirements of chapter 2; or

6 (b) That the specification does not comply with the requirements  
7 of section 28.

#### **§ 3. Revocation on motion of the Attorney General**

1 The Attorney General may apply to the Patent Office to cancel a  
2 patent on the ground of fraud or misrepresentation in obtaining the  
3 patent.

4 If in any action brought by the United States under the antitrust  
5 laws the defendant maintains that the actions complained of were a  
6 valid exercise of rights under a patent, the Attorney General may  
7 apply to the Patent Office to cancel the patents on any of the grounds  
8 specified in section 2, but the validity of the patent may not be raised  
9 in said action.

## REVISION TITLE 35 U. S. CODE

### § 4. Revocation during suit involving patent

1 In any action in which the validity of a patent may be considered  
2 by the court, the court may require the party raising the issue of  
3 validity of the patent to proceed to seek revocation of the patent  
4 before the Patent Office, within such time as the court may designate.  
5 The Patent Office, in such proceeding shall consider any evidence in  
6 the action which may be certified to it as well as any evidence pro-  
7 duced before it. Upon failure to initiate proceedings within the  
8 time specified, the party in default may not question the validity of  
9 the patent in the action.

### § 5. Requirements for petition

1 Any petition for cancellation must be in writing and verified; it  
2 must specify the grounds upon which it is based and include a state-  
3 ment of the facts to be relied upon, and (except in a proceeding  
4 under section 3 hereof) be accompanied by the fee required.

### § 6. Notice and hearing

1 Upon the filing of any petition for cancellation the Commissioner  
2 shall notify the patentee and any person having an interest in the  
3 patent which has been recorded in the Patent Office, and afford  
4 all interested parties an opportunity for the presentation of evidence  
5 and for a hearing.

### § 7. Decision

1 The decision of the Patent Office shall be by the Commissioner  
2 or by a panel of the Board of Appeals, as the Commissioner may  
3 direct. If a case for cancellation is made out, the Commissioner  
4 shall order the claims or any specified claim of the patent cancelled.

### § 8. Review

1 The decision of the Patent Office may be reviewed, at the instance  
2 of the aggrieved party, by appeal or by civil action as provided in  
3 the case of applications for patents and interferences, but any review  
4 in cases under section 4 shall be in the court having jurisdiction of  
5 the action.

### § 9. Counsel for patentee

1 Upon the request of the patentee, in cases under sections 1 and 2,  
2 the Attorney General shall provide counsel to represent and appear  
3 for the patentee and to conduct the proceedings on his behalf.

### Notes

Section 1 raises the proposal often made that applications for patent be published before a patent is granted to give the public an opportunity to submit

## ADDITIONAL ITEMS

material to the Patent Office bearing on patentability; administration would be simpler if this were done after the grant instead of before.

Sections 2 and 9 follow a recommendation of the National Patent Planning Commission (1941). Section 4 is also based on a recommendation of the National Patent Planning Commission.

Section 3, in the first paragraph, substitutes an action in the Patent Office for the present original action by the Attorney General to cancel a patent for fraud. The second paragraph raises the question of whether the validity of a patent should be considered in an antitrust suit by the Government.

### 2. *Compulsory Licenses*

#### 1. Grounds for compulsory license

1 Any person may apply to the Commissioner of Patents for the  
2 grant of a license under a particular patent at any time after the  
3 expiration of three years from the grant of the patent, under any of  
4 the following circumstances:

5 (a) If the patented invention is not being worked in the United  
6 States on a commercial scale without reasonable justification.

7 (b) If the demand for the patented invention in the United States  
8 is not being met to an adequate extent without reasonable justification  
9 or is being met to a substantial extent by importation.

10 (c) If by reason of conditions attached by the patentee to licenses  
11 under the patent, or to the purchase, lease or use of the patented  
12 article or process, the manufacture, use or sale of materials not  
13 protected by the patent is unreasonably restrained or if the patent  
14 has been used to unreasonably restrain trade beyond the actual rights  
15 conferred by the patent.

16 (d) If the decree of a court in an action by the United States under  
17 the anti-trust laws has declared that the patent shall be available for  
18 licensing to any applicant on reasonable terms.

19 (e) If the use of the patented invention is necessary for public  
20 health or public safety.

21 (f) That the applicant for license is the patentee of an invention  
22 of an improvement on the patented invention which cannot be  
23 worked without utilizing the patented invention, provided that the  
24 improvement is a substantial and important contribution to the art  
25 and the applicant for license is willing and able to grant to the patentee  
26 and his licensees a license to use his improvement on reasonable terms.

27 In determining the existence of reasonable justification under para-  
28 graphs (a) and (b) there shall be considered, among other factors,  
29 the efforts of, and measures taken by, the patentee and whether  
30 sufficient time has elapsed since the date of the patent to work the  
31 invention or supply the market, considering the nature of the inven-  
32 tion and the resources of the patentee.

## REVISION TITLE 35 U. S. CODE

### 2. Petition, notice and hearing

1 The petition for license must be in writing and verified, it must  
2 specify the grounds upon which it is based and include a statement  
3 of the facts to be relied upon and of the nature and terms of the  
4 license desired. Upon the filing of any petition for license and the  
5 payment of the prescribed fee the Commissioner shall notify the  
6 patentee and any person having an interest in the patent which has  
7 been recorded in the Patent Office and afford all interested parties  
8 an opportunity for the presentation of evidence and for a hearing.

### 3. Grant of license

1 If the Commissioner finds that the circumstances recited in section  
2 1 are present and a case for the grant of a license is made out, and  
3 that it is in the public interest that a license should be granted, he  
4 may order the grant of an appropriate license and, in default of  
5 agreement among the parties to the terms and conditions of the  
6 license, he may also fix such terms and conditions in the order.  
7 The order of the Commissioner granting a license under this act,  
8 when it becomes final, shall operate as a license executed by the  
9 patentee and all other necessary parties.

### 4. Review

1 The decision of the Commissioner may be reviewed at the instance  
2 of the aggrieved party by appeal or by civil action as provided in the  
3 case of interferences.

#### Notes

This item brings up the controversial subject of compulsory licensing of patents. Paragraph (a) of section 1 recites the customary ground for grant of a compulsory license and both (a) and (b) would apply in the case of foreign owned United States patents when the invention was not being manufactured in the United States. Paragraph (c) is a possible remedy in the case of abuse of patents. Paragraph (d) relates to the existing power exercised by the courts in civil anti-trust actions. Paragraph (e) follows a recommendation of the National Patent Planning Commission (1943). Paragraph (f) is commonly found in laws of other countries. There have been numerous legislative proposals for compulsory licenses in this country.

### 3. Short Term or Minor Patents

1 Any applicant for a patent for a material object in the fields of  
2 patentable subject matter specified in section 21 may request a patent  
3 for a term of five years. Such patent shall be subject to the following  
4 conditions:

5 (a) Only one claim may be present.

6 (b) The patent shall be granted without consideration of the  
7 condition specified in section 23 except to a small degree, and the

## ADDITIONAL ITEMS:

- 8 patent shall likewise not be held invalid for failure to satisfy such  
9 condition, but such patent shall not be entitled to any scope or  
10 range of equivalents beyond the specific thing disclosed and claimed  
11 except to a small degree.  
12 (c) The final fee for issuing such patent shall be one third the final  
13 fee for other patents.

### Note

This item brings up the subject of whether a second class of short term or minor patents should be provided for, but the differentiation between the two classes and also their relationship would need development.

### 4. Patents of Addition

- 1 Whenever an application is made for a patent for an improvement  
2 on an invention for which the applicant has previously applied for  
3 or obtained a patent, or when an application for patent for an im-  
4 provement is owned by the same person who owns the prior applica-  
5 tion or patent, the Commissioner may at the request of the applicant  
6 issue the patent for the improvement as a patent of addition. A  
7 patent of addition shall not be granted until after the grant of the  
8 main patent, and the term of a patent of addition shall expire on the  
9 same date as the main patent. A patent of addition shall not be  
10 refused nor held invalid solely on the ground that the subject matter  
11 thereof may not be considered to involve invention, within the mean-  
12 ing of section 23, over the invention of the main patent, provided  
13 the subject matter claimed in a patent of addition is included within  
14 the scope of a claim of the main patent.

### Note

This proposal is intended to bring up the subject of patents of addition which are found in the laws of many countries.

### 5. Maintenance of Renewal Fees

- 1 1. During the period of the duration of a patent there shall be  
2 paid a first maintenance fee prior to the expiration of the fifth year  
3 from the date of the patent and a second maintenance fee prior to  
4 the expiration of the tenth year from the date of the patent, but said  
5 fees may be paid within six months after the expiration of the fifth  
6 or tenth years, respectively, upon payment of the additional fee  
7 prescribed. Notice of the requirement for the payment of the main-  
8 tenance fees shall be attached to or embodied in the patent. Failure  
9 to pay the maintenance fees shall result in the termination or lapsing  
10 of the exclusive right conferred by the patent at the end of the  
11 fifth year or at the end of the tenth year as the case may be.

REVISION TITLE 35 U. S. CODE

12 2. Patents for designs shall be granted for the term of fifteen  
13 years, subject to the payment of maintenance fees as in the case of  
14 other patents.

15 3. The following shall be the maintenance fees:

16 First maintenance fee, payable before the expiration of the  
17 fifth year of the patent, \$50, and \$25 in the case of design patents;

18 Second maintenance fee, payable before the expiration of the  
19 tenth year of the patent, \$75, and \$25 in the case of design  
20 patents;

21 On delayed payment of a maintenance fee up to six months, for  
22 each month or fraction thereof, \$10, and \$5 in the case of design  
23 patents.

Note

This proposal follows H. R. 3700, 80th Congress, which is a modification of a recommendation of the Science Advisory Board, 1935, and brings up the subject of periodical fees intended to eliminate from being in force patents in which their owners are no longer interested.

## APPENDIX

### TABLE OF PATENT LAWS, 1874-1949\*

#### (A) REVISED STATUTES OF 1874

R. S. Sec.	Draft Sec.	R. S. Sec.	Draft Sec.	R. S. Sec.	Draft Sec.
440.....	Repealed Mar. 3, 1933	973.....	Repealed June 25, 1948, and replaced by 28 U. S. C. 1928	4908.....	46
475.....	1	4893.....	55	4909.....	43
476.....	3	4894.....	56, 91	4910.....	Repealed Mar. 3, 1927
477.....	Repealed Mar. 3, 1933	4895.....	53	4911.....	47
478.....	2	4896.....	31, 22, 89	4912.....	48
479.....	5	4897.....	22, 34, 95	4913.....	49
480.....	4	4898.....	27, 28, 90	4914.....	50
481.....	6	4899.....	29	4915.....	51, 52
482.....	7	4900.....	30	4916.....	53, 59
483.....	6	4901.....	30	4917.....	60
484-5.....	Repealed Mar. 3, 1933	4902.....	31	4918.....	67
486.....	8	4903.....	40	4919.....	78, 81
487.....	18, 19	4904.....	42, 69	4920.....	79
488.....	15	4905.....	44	4921.....	78, 80-83, 86
489.....	12	4906.....	45	4922.....	85
490.....	Repealed Mar. 3, 1933	4907.....	Repealed Aug. 9, 1939	4923.....	24
491.....	98	4908.....	64	4924-8.....	Repealed Mar. 3, 1933
494.....	16	4909.....	75	4929.....	93
495.....	Obsolete	4910.....	84	4930.....	Omitted
496.....	Obsolete	4911.....	88	4931.....	96
892.....	Repealed June 25, 1948, and replaced by 28 U. S. C. 1744	4912.....	Repealed June 25, 1910	4932.....	Repealed Mar. 3, 1933
893.....	Repealed June 25, 1948, and replaced by 28 U. S. C. 1746	4913.....	41, 44	4933.....	93
894.....	Repealed June 25, 1948, and replaced by 28 U. S. C. 1745	4914.....	44	4934.....	13, 14, 98
		4915.....	45	4935.....	99
		4916.....	46	4936.....	99
		4917.....	46		

#### (B) STATUTES AT LARGE

Date	Chapter	Section	Volume	Page	Draft Section
Mar. 3, 1883.....	143	(Part).....	22	625	68.
Feb. 4, 1887.....	105	1, 2.....	24	387	97.
Feb. 18, 1888.....	15	.....	25	40	65.
Mar. 3, 1891.....	541	1 (part).....	26	939	10.
Feb. 9, 1893.....	74	9.....	27	436	48, 51, 52.
Jan. 12, 1895.....	23	73 (part).....	28	619	(Printing, 44 U. S. C. 283-4, not affected by draft.)
May 9, 1896.....	204	.....	29	124	98.
Mar. 3, 1897.....	391	1.....	29	692	21, 22.
		2.....		692	79.
		3.....		693	22.
		4.....		693	42.
		5.....		693	64.
		6.....		694	78, 80-83, 86.
		7.....		694	Omitted.

\*Does not include private laws, appropriation acts, some temporary laws, and some laws relating to courts and jurisdiction now in title 28.

REVISION TITLE 35 U. S. CODE

TABLE OF PATENT LAWS, 1874-1949—Continued

(B) STATUTES AT LARGE—Continued

Date	Chapter	Section	Volume	Page	Draft Section
June 10, 1898.....	423	1	30	440	93.
Feb. 28, 1899.....	227		30	915	33.
Apr. 11, 1902.....	417		32	95	55.
May 9, 1902.....	783		32	193	93.
Mar. 3, 1903.....	1019	1	32	1225	22, 34, 95.
		2		1226	31.
		3		1226	33.
		4		1227	Amends R. S. 4902.
May 23, 1908.....	188		35	245	33.
May 23, 1908.....	189		35	246	53.
May 27, 1908.....	200	1 (part)	35	343	98.
June 25, 1910.....	414	1	36	843	Repeals R. S. 4902.
		2		843	98.
June 25, 1910.....	423		36	851	Repealed June 25, 1928, and replaced by 28 U. S. C. 1498.
Jan. 14, 1915.....	Pub. Res.		38	1221	13.
	61				
Mar. 3, 1915.....	94	1	38	958	27, 28.
		2		959	29.
Feb. 15, 1916.....	22	1	39	8	Amends R. S. 476.
		2		9	2.
		3		9	Amends R. S. 440.
July 6, 1916.....	225	1 (part)	39	343	42.
Oct. 6, 1917.....	95		40	394	38.
July 1, 1918.....	114		40	705	Amends Act of June 25, 1910, repealed June 25, 1928, and replaced by 28 U. S. C. 1498.
Nov. 4, 1919.....	93	1 (part)	41	335	98.
Mar. 6, 1920.....	94	1 (part)	41	512	99.
Mar. 3, 1921.....	126	1-8	41	1313	Obsolete.
Feb. 18, 1922.....	58	1	42	389	Amends R. S. 477.
		2		389	Amends R. S. 440.
		3		390	18, 19.
		4		391	Amends Act of Jan. 12, 1895.
		5		391	55.
		6		391	64.
		7		391	46.
		8		392	78, 80-83, 86.
		9		393	13, 14, 98.
Feb. 13, 1925.....	230		43	942	Omitted.
Mar. 4, 1925.....	535	1	43	1268	61.
		2		1269	Amends R. S. 892.
Feb. 7, 1927.....	67		44	1058	84.
Feb. 14, 1927.....	139	1	44	1098	2.
		2		1099	98.
Mar. 2, 1927.....	273	1	44	1335	42.
		2		1335	Amends R. S. 4897.
		3		1335	7.
		4		1336	44.
		5		1336	43.
		6		1336	Repeals R. S. 4910.
		7		1336	Repeals Sec. 9, Act of Feb. 9, 1893.

APPENDIX

TABLE OF PATENT LAWS, 1874-1949--Continued

(B) STATUTES AT LARGE--Continued

Date	Chapter	Section	Volume	Page	Draft Section
Mar. 2, 1927	273	8	44	1336	47.
		9		1336	48.
		10		1336	49.
		11		1336	51, 52.
		12		1337	87.
		13		1337	98.
		14		1337	17.
Mar. 3, 1927	304		44	1304	52.
Apr. 30, 1928	460		45	467	68.
May 24, 1928	730		45	732	58, 59.
May 31, 1928	992	1-4	45	1019	Obsolete.
Mar. 2, 1929	438	2	45	1476	47, 48, 51, 52.
Apr. 11, 1930	132	1	46	155	3.
		2		155	7.
		3		155	98.
		5		156	Omitted as repealed or superseded by Act of June 23, 1934, sec. 6, ch. 756, 48; Stat. 1228 (31 U. S. C. 725e).
		6		156	11.
May 23, 1930	312	1	46	376	21, 22, 27, 28, 56, 89, 91.
		2		376	90.
		3		376	31.
		4		376	92.
		5		376	102 (m)
		6		376	100.
June 30, 1932	314	308	47	410	98.
		309		410	98.
Mar. 3, 1933	202	1	47	1428	Repeals R. S. 440, 477, 484, 485, 490, 491, 492, 492A-492B, 4932.
June 10, 1936	94		49	1529	22, 34, 95.
May 9, 1938	189		52	342	20.
Aug. 5, 1939	450	1	53	1212	21, 22, 34, 79, 92, 95.
		2		1212	102 (l).
Aug. 5, 1939	451	1	53	1212	44.
		2		1212	43.
		3		1212	47.
		4		1212	51, 52.
Aug. 5, 1939	452	1	53	1213	41.
Aug. 7, 1939	568		53	1264	42.
Aug. 9, 1939	619	1	53	1293	Repeals R. S. 4897.
		2		1293	63.
		3		1293	98.
July 1, 1940	501	1	54	710	38.
July 2, 1940	515		54	724	19 U. S. C. 1337a, not affected by draft.
Aug. 18, 1941	370		55	634	64.
Aug. 21, 1941	393		55	657	38.
June 16, 1942	413		56	370	38.
Oct. 31, 1942	634		56	1013	77.
July 8, 1946	541	301 (part)	60	471	98.
Aug. 1, 1946	724	11	60	768	Atomic Energy Act, not affected by draft.
Aug. 1, 1946	726	1	60	778	78, 80-83, 86.
Aug. 7, 1946	775		60	873	Expired.

REVISION TITLE 35 U. S. CODE

TABLE OF PATENT LAWS, 1874-1949—Continued

(B) STATUTES AT LARGE—Continued

Date	Chapter	Section	Volume	Page	Draft Section
Aug. 8, 1946	910	1-15	60	940	Not included or affected by draft; part of sec. 9 included in sec. 28.
July 23, 1947	302		61	413	Not included or affected.
Aug. 6, 1947	511		61	794	Not included or affected.
June 25, 1948	646		62	869	Title 28, Judicial Code and Judiciary, repeals Act of June 25, 1910, amended July 1, 1913, and R. S. 892, 893, 894, and 973, and replaces by 28 U. S. C. 1498, 1744, 1745, 1746, 1923. Not included or affected.
May 24, 1949	139				Amends 28 U. S. C. 1498, 1744, 1746; repeals 28 U. S. C. 1745.

UNITED STATES CODE, TITLE 35

35 U. S. C. Sec.	Draft Sec.	35 U. S. C. Sec.	Draft Sec.	35 U. S. C. Sec.	Draft Sec.
1	1	40	56, 91	62	60
2	3	40a	Obsolete	63	51, 62
8	2	40b	Obsolete	64	53, 69
4	4	40c	Obsolete	65	60
5	5	40d	Obsolete	66	37
6	6	41	53	67	78
7	7	42	38	69	79
10	8	42a	33	70	78, 80-83, 86
11	13, 19	42b	38	71	85
11a	20	42c	38	72	24
12	15	42d	38, 102	72a	52
13	12	42e	38	73	93
14	10	42f	38	74	97
15	13	43	Omitted	75	97
16	12	44	54	76	Omitted
17	Obsolete	45	63	77	96
18	Omitted	46	33	78	13, 14, 98
19	Obsolete	47	64	79	99
20	16	48	75	80-87	Obsolete
21	17	49	84	88	61
22	Obsolete	50	88	89	77
23	11	51	41	90	77
31	21, 22, 89	52	44	91	77
32	22, 34, 95	53	45	92	77
32a	102	54	46	93	77
32b	100	55	46	94	77
33	27, 28, 90	56	46	95	77
34	29, 30	56a	92	96	77
35	31	57	43	101-114	Not included or affected by draft, part of 109 in sec. 26
36	40	59a	47		
37	42, 69	60	48		
39	55	61	49		