PATENT TRADEMARK AND COPYRIGHT LAWS

1985 Edition

Edited by
Jeffrey M. Samuels

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Jeffrey M. Samuels
Managing Editor
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Introduction

The Bureau of National Affairs, Inc., publisher of *BNA's Patent, Trademark & Copyright Journal* and *The United States Patents Quarterly*, is pleased to present this compilation entitled *Patent, Trademark, and Copyright Laws*. This edition includes Title 35 (Patents), Title 17 (Copyrights), and Chapter 22 of Title 15 (Trademarks) of the United States Code. It also includes miscellaneous sections of the United States Code relating to the practice of intellectual property. All statutory changes enacted through January 1985 are incorporated.

J. M. S.

Washington, D.C.
January 1985

ART. 1, SEC. 8, CL. 3. The Congress shall have power . . . To regulate commerce with foreign nations, and among the several states, and with the Indian tribes.

ART. 1, SEC. 8, CL. 8. The Congress shall have power . . . To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

UNITED STATES CODE

TITLE 35—PATENTS

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CHAPTER 1—ESTABLISHMENT, OFFICERS, FUNCTIONS

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§ 1. Establishment

The Patent and Trademark Office shall continue as an office in the Department of Commerce, where records, books, drawings, specifications, and other papers and things pertaining to patents and to trademark registrations shall be kept and preserved, except as otherwise provided by law. (Amended January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949.)

§ 2. Seal

The Patent and Trademark Office shall have a seal with which letters patent, certificates of trade-mark registrations, and papers issued from the Office shall be authenticated. (Amended January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949.)

§ 3. Officers and employees

(a) There shall be in the Patent and Trademark Office a Commissioner of Patents and Trademarks, a Deputy Commissioner, two

Assistant Commissioners and examiners-in-chief appointed under section 7 of this title. The Deputy Commissioner, or, in the event of a vacancy in that office, the Assistant Commissioner senior in date of appointment, shall fill the office of Commissioner during a vacancy in that office until the Commissioner is appointed and takes office. The Commissioner of Patents and Trademarks, the Deputy Commissioner, and the Assistant Commissioner shall be appointed by the President, by and with the advice and consent of the Senate. The Secretary of Commerce, upon the nomination of the Commissioner in accordance with law, shall appoint all other officers and employees.

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

(c) The Secretary of Commerce is authorized to fix the per annum rate of basic compensation of each examiner-in-chief in the Patent and Trademark Office at not in excess of the maximum scheduled rate provided for positions in grade 17 of the General Schedule of the Classification Act of 1949, as amended. (Amended September 6, 1958, Public Law 85-933, sec. 1, 72 Stat. 1793; September 23, 1959, Public Law 86-370, sec. 1(a), 73 Stat. 650; August 14, 1964, Public Law 88-426, sec. 305(26), 78 Stat. 425; January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949; January 2, 1975, Public Law 93-601, sec. 1, 88 Stat. 1956; and August 27, 1982, Public Law 97-247, sec. 4, 96 Stat. 319.)

(d) The Commissioner of Patents and Trademarks shall be an Assistant Secretary of Commerce and shall receive compensation at the rate prescribed by law for Assistant Secretaries of Commerce. (Added October 25, 1982, Public Law 97-366, 96 Stat. 1760.)

(e) The members of the Trademark Trial and Appeal Board of the Patent and Trademark Office shall each be paid at a rate not to exceed the maximum rate of basic pay payable for GS-16 of the General Schedule under section 5332 of title 5. (Added November 8, 1984, Public Law 98-622, sec. 405, 98 Stat. 3392.)

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

Officers and employees of the Patent and Trademark Office shall be incapable, during the period of their appointments and for one year thereafter, of applying for a patent and of acquiring, directly or indirectly, except by inheritance or bequest, any patent or any right or

interest in any patent, issued or to be issued by the Office. In patents applied for thereafter they shall not be entitled to any priority date earlier than one year after the termination of their appointment. (Amended January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949.)

§ 5. Repealed (June 6, 1972, Public Law 92-310, Title II, sec. 208(a), 86 Stat. 203.)

§ 6. Duties of Commissioner

(a) The Commissioner, under the direction of the Secretary of Commerce, shall superintend or perform all duties required by law respecting the granting and issuing of patents and the registration of trademarks; shall have the authority to carry on studies, programs or exchanges of items or services regarding domestic and international patent and trademark law or the administration of the Patent and Trademark Office; and shall have charge of property belonging to the Patent and Trademark Office. He may, subject to the approval of the Secretary of Commerce, establish regulations, not inconsistent with law, for the conduct of proceedings in the Patent and Trademark Office.

(b) The Commissioner, under the direction of the Secretary of Commerce, may, in coordination with the Department of State, carry on programs and studies cooperatively with foreign patent offices and international intergovernmental organizations, or may authorize such programs and studies to be carried on, in connection with the performance of duties stated in subsection (a) of this section.

(c) The Commissioner, under the direction of the Secretary of Commerce, may, with the concurrence of the Secretary of State, transfer funds appropriated to the Patent and Trademark Office, not to exceed $100,000 in any year, to the Department of State for the purpose of making special payments to international intergovernmental organizations for studies and programs for advancing international cooperation concerning patents, trademarks, and related matters. These special payments may be in addition to any other payments or contributions to the international organization and shall not be subject to any limitations imposed by law on the amounts of such other payments or contributions by the Government of the United States. (Amended October 5, 1971, Public Law 92-132, 85 Stat. 364; January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949; August 27, 1982, Public Law 97-247, sec. 13, 96 Stat. 321.)

(d) Repealed. (August 27, 1982, Public Law 97-247, sec. 7, 96 Stat. 320.)

§ 7. Board of Patent Appeals and Interferences.

(a) The examiners-in-chief shall be persons of competent legal knowledge and scientific ability, who shall be appointed to the competitive service. The Commissioner, the Deputy Commissioner, the Assistant Commissioners, and the examiners-in-chief shall constitute the Board of Patent Appeals and Interferences.

(b) The Board of Patent Appeals and Interferences shall, on written appeal of an applicant, review adverse decisions of examiners upon applications for patents and shall determine priority and patentability of invention in interferences declared under section 135(a) of this title. Each appeal and interference shall be heard by at least three members of the Board of Patent Appeals and Interferences, who shall be designated by the Commissioner. Only the Board of Patent Appeals and Interferences has the authority to grant rehearings.

(c) Whenever the Commissioner considers it necessary, in order to keep current the work of the Board of Patent Appeals and Interferences, the Commissioner may designate any patent examiner of the primary examiner grade or higher, having the requisite ability, to serve as examiner-in-chief for periods not exceeding six months each. An examiner so designated shall be qualified to act as a member of the Board of Patent Appeals and Interferences. Not more than one of the members of the Board of Patent Appeals and Interferences hearing an appeal or determining an interference may be an examiner so designated. The Secretary of Commerce is authorized to fix the pay of each designated examiner-in-chief in the Patent and Trademark Office at not to exceed the maximum rate of basic pay payable for grade GS-16 of the General Schedule under section 5332 of title 5. The rate of basic pay of each individual designated examiner-in-chief shall be adjusted, at the close of the period for which that individual was designated to act [as] examiner-in-chief, to the rate of basic pay [which] that individual would have been receiving at the close of such period if such designation had not been made. (Amended November 8, 1984, Public Law 98-622, sec. 201(a), 98 Stat. 3386.)

§ 8. Library

The Commissioner shall maintain a library of scientific and other works and periodicals, both foreign and domestic, in the Patent and

Trademark Office to aid the officers in the discharge of their duties. (Amended January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949.)

§ 9. Classification of patents

The Commissioner may revise and maintain the classification by subject matter of United States letters patent, and such other patents and printed publications as may be necessary or practicable, for the purpose of determining with readiness and accuracy the novelty of inventions for which applications for patent are filed.

§ 10. Certified copies of records

The Commissioner may furnish certified copies of specifications and drawings of patents issued by the Patent and Trademark Office, and of other records available either to the public or to the person applying therefore. (Amended January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949.)

§ 11. Publications

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

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

(b) The Commissioner may exchange any of the publications specified in items 3, 4, 5, and 6 of subsection (a) of this section for publications desirable for the use of the Patent and Trademark Office. (Amended January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949.)

§ 12. Exchange of copies of patents with foreign countries

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

§ 13. Copies of patents for public libraries

The Commissioner may supply printed copies of specifications and drawings of patents to public libraries in the United States which shall maintain such copies for the use of the public, at the rate for each year's issue established for this purpose in section 41(d) of this title. (Amended August 27, 1982, Public Law 97-247, sec. 15, 96 Stat. 321.)

§ 14. Annual report to Congress

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

CHAPTER 2 — PROCEEDINGS IN THE PATENT AND TRADEMARK OFFICE

SEC.

21. Filing date and day for taking action.
22. Printing of papers filed.
23. Testimony in Patent and Trademark Office cases.
24. Subpoenas, witnesses.
25. Declaration in lieu of oath.
26. Effect of defective execution.

§ 21. Filing date and day for taking action.

(a) The Commissioner may by rule prescribe that any paper or fee required to be filed in the Patent and Trademark Office will be considered filed in the Office on the date on which it was deposited with the United States Postal Service or would have been deposited with the United States Postal Service but for postal service interruptions or emergencies designated by the Commissioner.

(b) When the day, or the last day, for taking any action or paying any fee in the United States Patent and Trademark Office falls on Saturday, Sunday, or a federal holiday within the District of Columbia, the action may be taken, or the fee paid, on the next succeeding secular or business day. (Amended January 2, 1975, Public Law 93-596,

sec. 1, 88 Stat. 1949; August 27, 1982, Public Law 97-247, sec. 12, 96 Stat. 321.)

§ 22. Printing of papers filed

The Commissioner may require papers filed in the Patent and Trademark Office to be printed or typewritten. (Amended January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949.)

§ 23. Testimony in Patent and Trademark Office cases

The Commissioner may establish rules for taking affidavits and depositions required in cases in the Patent and Trademark Office. Any officer authorized by law to take depositions to be used in the courts of the United States, or of the State where he resides, may take such affidavits and depositions. (Amended January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949.)

§ 24. Subpoenas, witnesses

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

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

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

na. (Amended January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949.)

§ 25. Declaration in lieu of oath

(a) The Commissioner may by rule prescribe that any document to be filed in the Patent and Trademark Office and which is required by any law, rule, or other regulation to be under oath may be subscribed to by a written declaration in such form as the Commissioner may prescribe, such declaration to be in lieu of the oath otherwise required.

(b) Whenever such written declaration is used, the document must warn the declarant that willful false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. 1001). (New section added March 26, 1964, Public Law 88-292, sec. 1, 78 Stat. 171; amended January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949.)

Note. — 18 U.S.C. 1001 provides: "Whoever in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both." (June 25, 1948, 62 Stat. 749)

§ 26. Effect of defective execution

Any document to be filed in the Patent and Trademark Office and which is required by any law, rule, or other regulation to be executed in a specified manner may be provisionally accepted by the Commissioner despite a defective execution, provided a properly executed document is submitted within such time as may be prescribed. (New section added March 26, 1964, Public Law 88-292, sec. 1, 78 Stat. 171; amended January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949.)

CHAPTER 3 — PRACTICE BEFORE PATENT AND TRADEMARK OFFICE

SEC.

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

§ 31. Regulations for agents and attorneys

The Commissioner, subject to the approval of the Secretary of Commerce, may prescribe regulations governing the recognition and conduct of agents, attorneys, or other persons representing applicants or other parties before the Patent and Trademark Office, and may require them, before being recognized as representatives of applicants or other persons, to show that they are of good moral character and reputation and are possessed of the necessary qualifications to render to applicants or other persons, valuable service, advice, and assistance in the presentation or prosecution of their applications or other business before the Office. (Amended January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949.)

§ 32. Suspension or exclusion from practice

The Commissioner may, after notice and opportunity for a hearing, suspend or exclude, either generally or in any particular case, from further practice before the Patent and Trademark Office, any person, agent, or attorney shown to be incompetent or disreputable, or guilty of gross misconduct, or who does not comply with the regulations established under section 31 of this title, or who shall, by word, circular, letter, or advertising, with intent to defraud in any manner, deceive, mislead, or threaten any applicant or prospective applicant, or other person having immediate or prospective business before the Office. The reasons for any such suspension or exclusion shall be duly recorded. The United States District Court for the District of Columbia, under such conditions and upon such proceedings as it by its rules determines, may review the action of the Commissioner upon the petition of the person so refused recognition or so suspended or excluded. (Amended January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949.)

§ 33. Unauthorized representation as practitioner

Whoever, not being recognized to practice before the Patent and Trademark Office, holds himself out or permits himself to be held out as so recognized, or as being qualified to prepare or prosecute applications for patent, shall be fined not more than $1,000 for each offense. (Amended January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949.)

SEC.

41. Patent fees.
42. Patent and Trademark Office funding.

§ 41. Patent fees

(a) The Commissioner shall charge the following fees:

1. On filing each application for an original patent, except in design or plant cases, $300; in addition, on filing or on presentation at any other time, $30 for each claim in independent form which is in excess of three, $10 for each claim (whether independent or dependent) which is in excess of twenty, and $100 for each application containing a multiple dependent claim. For the purpose of computing fees, a multiple dependent claim as referred to in section 112 of this title or any claim depending therefrom shall be considered as separate dependent claims in accordance with the number of claims to which reference is made. Errors in payment of the additional fees may be rectified in accordance with regulations of the Commissioner.

2. For issuing each original or reissue patent, except in design or plant cases, $500.

3. In design and plant cases:

a. On filing each design application, $125.

b. On filing each plant application, $200.

c. On issuing each design patent, $175.

d. On issuing each plant patent, $250.

4. On filing each application for the reissue of a patent, $300; in addition, on filing or on presentation at any other time, $30 for each claim in independent form which is in excess of the number of independent claims of the original patent, and $10 for each claim (whether independent or dependent) which is in excess of twenty and also in excess of the number of claims of the original patent. Errors in payment of the additional fees may be rectified in accordance with regulations of the Commissioner.

5. On filing each disclaimer, $50.

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

(Amended November 8, 1984, Public Law 98-622, sec. 204(a), 98 Stat. 3388.)

7. On filing each petition for the revival of an unintentionally abandoned application for a patent or for the unintentionally delayed payment of the fee for issuing each patent, $500, unless the petition is filed under sections 133 or 151 of this title, in which case the fee shall be $50.

8. For petitions for one-month extensions of time to take actions required by the Commissioner in an application:

a. On filing a first petition, $50.

b. On filing a second petition, $100.

c. On filing a third or subsequent petition, $200.

(b) The Commissioner shall charge the following fees for maintaining a patent in force:

1. Three years and six months after grant, $400.

2. Seven years and six months after grant, $800.

3. Eleven years and six months after grant, $1,200.

Unless payment of the applicable maintenance fee is received in the Patent and Trademark Office on or before the date the fee is due or within a grace period of six months thereafter, the patent will expire as of the end of such grace period. The Commissioner may require the payment of a surcharge as a condition of accepting within such six-month grace period the late payment of an applicable maintenance fee. No fee will be established for maintaining a design or plant patent in force.

Note. — Sec. 1 of Public Law 97-247, August 27, 1982, 96 Stat. 317, authorizes the appropriations of funds for the Patent and Trademark Office for fiscal years 1983–1985 and requires that such funds will be used to reduce by 50 percent the payment of fees under section 41(a) and (b) by independent inventors, nonprofit organizations, and small businesses, as defined by section 3 of the Small Business Act and applicable regulations.

(c)(1) The Commissioner may accept the payment of any maintenance fee required by subsection (b) of this section after the six-month grace period if the delay is shown to the satisfaction of the Commissioner to have been unavoidable. The Commissioner may require the payment of a surcharge as a condition of accepting payment of any maintenance fee after the six-month grace period. If the Commissioner accepts payment of a maintenance fee after

the six-month grace period, the patent shall be considered as not having expired at the end of the grace period.

Note.—Sec. 404 of Public Law 98-622, November 8, 1984, 98 Stat. 3392, provides as follows:

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

"Notwithstanding section 41(c) of title 35, United States Code, as in effect before the enactment of Public Law 97-247 (96 Stat. 317), the Commissioner of Patents and Trademarks may accept, after the six-month grace period referred to in such section 41(c), the payment of any maintenance fee due on any patent based on an application filed in the Patent and Trademark Office on or after December 12, 1980, and before August 27, 1982, to the same extent as in the case of patents based on applications filed in the Patent and Trademark Office on or after August 27, 1983."

(2) No patent, the term of which has been maintained as a result of the acceptance of a payment of a maintenance fee under this subsection, shall abridge or affect the right of any person or his successors in business who made, purchased or used after the six-month grace period but prior to the acceptance of a maintenance fee under this subsection anything protected by the patent, to continue the use of, or to sell to others to be used or sold, the specific thing so made, purchased, or used. The court before which such matter is in question may provide for the continued manufacture, use or sale of the thing made, purchased, or used as specified, or for the manufacture, use or sale of which substantial preparation was made after the six-month grace period but before the acceptance of a maintenance fee under this subsection, and it may also provide for the continued practice of any process, practiced, or for the practice of which substantial preparation was made, after the six-month grace period but prior to the acceptance of a maintenance fee under this subsection, to the extent and under such terms as the court deems equitable for the protection of investments made or business commenced after the six-month grace period but before the acceptance of a maintenance fee under the subsection.

(d) The Commissioner will establish fees for all other processing, services, or materials related to patents not specified above to recover the estimated average cost to the Office of such processing, services, or materials. The yearly fee for providing a library specified in section

13 of this title with uncertified printed copies of the specifications and drawings for all patents issued in that year will be $50.

(e) The Commissioner may waive the payment of any fee for any service or material related to patents in connection with an occasional or incidental request made by a department or agency of the Government, or any officer thereof. The Commissioner may provide any applicant issued a notice under section 132 of this title with a copy of the specifications and drawings for all patents referred to in that notice without charge.

(f) The fees established in subsections (a) and (b) of this section may be adjusted by the Commissioner on October 1, 1985, and every third year thereafter, to reflect any fluctuations occurring during the previous three years in the Consumer Price Index, as determined by the Secretary of Labor. Changes of less than 1 per centum may be ignored.

(g) No fee established by the Commissioner under this section will take effect prior to sixty days following notice in the Federal Register. (As amended December 12, 1980, Public Law 96-517, sec. 2, 94 Stat. 3017; August 27, 1982, Public Law 97-247, sec. 3, 96 Stat. 317.)

§ 42. Patent and Trademark Office funding

(a) All fees for services performed by or materials furnished by the Patent and Trademark Office will be payable to the Commissioner.

(b) All fees paid to the Commissioner and all appropriations for defraying the costs of the activities of the Patent and Trademark Office will be credited to the Patent and Trademark Office Appropriation Account in the Treasury of the United States, the provisions of section 725e of title 31, United States Code, notwithstanding.

(c) Revenues from fees will be available to the Commissioner of Patents to carry out, to the extent provided for in appropriation Acts, the activities of the Patent and Trademark Office. Fees available to the Commissioner under section 31 of the Trademark Act of 1946, as amended (15 U.S.C. 1113), shall be used exclusively for the processing of trademark registrations and for other services and materials relating to trademarks.

(d) The Commissioner may refund any fee paid by mistake or any amount paid in excess of that required. (As amended November 14, 1975, Public Law 94-131, sec. 4, 89 Stat. 690; December 12, 1980, Public Law 96-517, sec. 3, 94 Stat. 3018; August 27, 1982, Public Law 97-247, sec. 3(g), 96 Stat. 319.)

PART II — PATENTABILITY OF INVENTIONS AND GRANT OF PATENTS

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CHAPTER 10 — PATENTABILITY OF INVENTIONS

SEC.

100. Definitions.
101. Inventions patentable.
102. Conditions for patentability; novelty and loss of right to patent.
103. Conditions for patentability; non-obvious subject matter.
104. Invention made abroad.

§ 100. Definitions

When used in this title unless the context otherwise indicates —

(a) The term "invention" means invention or discovery.

(b) The term "process" means process, art or method, and includes a new use of a known process, machine, manufacture, composition of matter, or material.

(c) The terms "United States" and "this country" mean the United States of America, its territories and possessions.

(d) The word "patentee" includes not only the patentee to whom the patent was issued but also the successors in title to the patentee.

§ 101. Inventions patentable

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

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

A person shall be entitled to a patent unless —

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

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

(c) he has abandoned the invention, or

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

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent, or

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

(g) before the applicant's invention thereof the invention was made in this country by another who had not abandoned, suppressed, or concealed it. In determining priority of invention there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time prior to conception by the other (Amended July 28, 1972, Public Law 92-358, sec. 2, 86 Stat. 501; November 14, 1975, Public Law 94-131, sec. 5, 89 Stat. 691.)

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

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this ti-

tle, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. (Added November 8, 1984, Public Law 98-622, sec. 103, 98 Stat. 3384.)

§ 104. Invention made abroad

In proceedings in the Patent Office and in the courts, an applicant for a patent, or a patentee, may not establish a date of invention by reference to knowledge or use thereof, or other activity with respect thereto, in a foreign country, except as provided in sections 119 and 365 of this title. Where an invention was made by a person, civil or military, while domiciled in the United States and serving in a foreign country in connection with operations by or on behalf of the United States, he shall be entitled to the same rights of priority with respect to such inventions as if the same had been made in the United States. (Amended January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949; November 14, 1975, Public Law 94-131, sec. 6, 89 Stat. 691.)

CHAPTER 11 — APPLICATION FOR PATENT

SEC.

111. Application for patent.
112. Specification.
113. Drawings.
114. Models, specimens.
115. Oath of applicant.
116. Inventors.
117. Death or incapacity of inventor.
118. Filing by other than inventor.
119. Benefit of earlier filing date in foreign country; right of priority.
120. Benefit of earlier filing date in the United States.
121. Divisional applications.
122. Confidential status of applications.

§ 111. Application for patent

Application for patent shall be made, or authorized to be made, by the inventor, except as otherwise provided in this title, in writing to the Commissioner. Such application shall include (1) a specification as prescribed by section 112 of this title; (2) a drawing as prescribed by section 113 of this title; and (3) an oath by the applicant as prescribed by section 115 of this title. The application must be accompanied by the fee required by law. The fee and oath may be submitted after the specification and any required drawing are submitted, within such period and under such conditions, including the payment of a surcharge, as may be prescribed by the Commissioner. Upon failure to submit the fee and oath within such prescribed period, the application shall be regarded as abandoned, unless it is shown to the satisfaction of the Commissioner that the delay in submitting the fee and oath was unavoidable. The filing date of an application shall be the date on which the specification and any required drawing are received in the Patent and Trademark Office. (Amended August 27, 1982, Public Law 97-247, sec. 5, 96 Stat. 319.)

§ 112. Specification

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

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention. A claim may be written in independent or, if the nature of the case admits, in dependent or multiple dependent form.

Subject to the following paragraph, a claim in dependent form shall contain a reference to a claim previously set forth and then specify a further limitation of the subject matter claimed. A claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers.

A claim in multiple dependent form shall contain a reference, in the alternative only, to more than one claim previously set forth and then specify a further limitation of the subject matter claimed. A

multiple dependent claim shall not serve as a basis for any other multiple dependent claim. A multiple dependent claim shall be construed to incorporate by reference all the limitations of the particular claim in relation to which it is being considered.

An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof. (Amended July 24, 1965, Public Law 89-83, sec. 9, 79 Stat. 261; November 14, 1975, Public Law 94-131, sec. 7, 89 Stat. 691.)

§ 113. Drawings

The applicant shall furnish a drawing where necessary for the understanding of the subject matter sought to be patented. When the nature of such subject matter admits of illustration by a drawing and the applicant has not furnished such a drawing, the Commissioner may require its submission within a time period of not less than two months from the sending of a notice thereof. Drawings submitted after the filing date of the application may not be used (i) to overcome any insufficiency of the specification due to lack of an enabling disclosure or otherwise inadequate disclosure therein, or (ii) to supplement the original disclosure thereof for the purpose of interpretation of the scope of any claim. (Amended November 14, 1975, Public Law 94-131, sec. 8, 89 Stat. 691.)

§ 114. Models, specimens

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

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

§ 115. Oath of applicant

The applicant shall make oath that he believes himself to be the original and first inventor of the process, machine, manufacture, or composition of matter, or improvement thereof, for which he solicits a patent; and shall state of what country he is a citizen. Such oath may

be made before any person within the United States authorized by law to administer oaths, or, when made in a foreign country, before any diplomatic or consular officer of the United States authorized to administer oaths, or before any officer having an official seal and authorized to administer oaths in the foreign country in which the applicant may be, whose authority is proved by certificate of a diplomatic or consular officer of the United States, or apostille of an official designated by a foreign country which, by treaty or convention, accords like effect to apostilles of designated officials in the United States. Such oath is valid if it complies with the laws of the state or country where made. When the application is made as provided in this title by a person other than the inventor, the oath may be so varied in form that it can be made by him. (Amended August 27, 1982, Public Law 97-247, sec. 14(a), 96 Stat. 321.)

§ 116. Inventors

When an invention is made by two or more persons jointly, they shall apply for patent jointly and each make the required oath, except as otherwise provided in this title. Inventors may apply for a patent jointly even though (1) they did not physically work together or at the same time, (2) each did not make the same type or amount of contribution, or (3) each did not make a contribution to the subject matter of every claim of the patent. (Added November 8, 1984, Public Law 98-622, sec. 104(a), 98 Stat. 3384.)

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

Whenever through error a person is named in an application for patent as the inventor, or through an error an inventor is not named in an application and such error arose without any deceptive intention on his part, the Commissioner may permit the application to be amended accordingly, under such terms as he prescribes. (Amended August 27, 1982, Public Law 97-247, sec. 6(a), 96 Stat. 320.)

§ 117. Death or incapacity of inventor

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

§ 118. Filing by other than inventor

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

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

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

No application for patent shall be entitled to this right of priority unless a claim therefor and a certified copy of the original foreign

application, specification and drawings upon which it is based are filed in the Patent and Trademark Office before the patent is granted, or at such time during the pendency of the application as required by the Commissioner not earlier than six months after the filing of the application in this country. Such certification shall be made by the patent office of the foreign country in which filed and show the date of the application and of the filing of the specification and other papers. The Commissioner may require a translation of the papers filed if not in the English language and such other information as he deems necessary.

In like manner and subject to the same conditions and requirements, the right provided in this section may be based upon a subsequent regularly filed application in the same foreign country instead of the first filed foreign application, provided that any foreign application filed prior to such subsequent application has been withdrawn, abandoned, or otherwise disposed of, without having been laid open to public inspection and without leaving any rights outstanding, and has not served, nor thereafter shall serve, as a basis for claiming a right of priority.

Applications for inventors' certificates filed in a foreign country in which applicants have a right to apply, at their discretion, either for a patent or for an inventor's certificate shall be treated in this country in the same manner and have the same effect for purpose of the right of priority under this section as applications for patents, subject to the same conditions and requirements of this section as apply to applications for patents, provided such applicants are entitled to the benefits of the Stockholm Revision of the Paris Convention at the time of such filing. (Amended October 3, 1961, Public Law 87-333, sec. 1, 75 Stat. 748; July 28, 1972, Public Law 92-358, sec. 1, 86 Stat. 502; and January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949.)

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

An application for patent for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in an application previously filed in the United States, or as provided by section 363 of this title, which is filed by an inventor or inventors named in the previously filed application shall have the same effect, as to such invention, as though filed on the date of the prior application, if filed before the patenting or abandonment of or termination of

proceedings on the first application or on an application similarly entitled to the benefit of the filing date of the first application and if it contains or is amended to contain a specific reference to the earlier filed application. (Amended November 14, 1975, Public Law 94-131, sec. 9, 89 Stat. 691; November 8, 1984, Public Law 98-622, sec. 104(b), 98 Stat. 3385.)

§ 121. Divisional applications

If two or more independent and distinct inventions are claimed in one application, the Commissioner may require the application to be restricted to one of the inventions. If the other invention is made the subject of a divisional application which complies with the requirements of section 120 of this title it shall be entitled to the benefit of the filing date of the original application. A patent issuing on an application with respect to which a requirement for restriction under this section has been made, or on an application filed as a result of such a requirement, shall not be used as a reference either in the Patent and Trademark Office or in the courts against a divisional application or against the original application or any patent issued on either of them, if the divisional application is filed before the issuance of the patent on the other application. If a divisional application is directed solely to subject matter described and claimed in the original application as filed, the Commissioner may dispense with signing and execution by the inventor. The validity of a patent shall not be questioned for failure of the Commissioner to require the application to be restricted to one invention. (Amended January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949.)

§ 122. Confidential status of applications

Applications for patents shall be kept in confidence by the Patent and Trademark Office and no information concerning the same given without authority of the applicant or owner unless necessary to carry out the provisions of any Act of Congress or in such special circumstances as may be determined by the Commissioner. (Amended January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949.)

CHAPTER 12 — EXAMINATION OF APPLICATION

SEC.

131. Examination of application.
132. Notice of rejection; reexamination.

133. Time for prosecuting application.
134. Appeal to the Board of Patent Appeals and Interferences.
135. Interferences.

§ 131. Examination of application

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

§ 132. Notice of rejection; reexamination

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

§ 133. Time for prosecuting application

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

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

An applicant for a patent, any of whose claims has been twice rejected, may appeal from the decision of the primary examiner to the Board of Patent Appeals and Interferences, having once paid the fee for such appeal. (Amended November 8, 1984, Public Law 98-622, sec. 204(b), 98 Stat. 3388.)

§ 135. Interferences

(a) Whenever an application is made for a patent which, in the opinion of the Commissioner, would interfere with any pending

application, or with any unexpired patent, an interference may be declared and the Commissioner shall give notice of such declaration to the applicants, or applicant and patentee, as the case may be. The Board of Patent Appeals and Interferences shall determine questions of priority of the inventions and may determine questions of patentability. Any final decision, if adverse to the claim of an applicant, shall constitute the final refusal by the Patent and Trademark Office of the claims involved, and the Commissioner may issue a patent to the applicant who is adjudged the prior inventor. A final judgment adverse to a patentee from which no appeal or other review has been or can be taken or had shall constitute cancellation of the claims involved in the patent, and notice of such cancellation shall be endorsed on copies of the patent distributed after such cancellation by the Patent and Trademark Office. (Amended November 8, 1984, Public Law 98-622, sec. 202, 98 Stat. 3386.)

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

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

The Commissioner shall give notice to the parties or their attorneys of record, a reasonable time prior to said termination, of the filing requirement of this section. If the Commissioner gives such notice at a

later time, irrespective of the right to file such agreement or understanding within the six-month period on a showing of good cause, the parties may file such agreement or understanding within sixty days of the receipt of such notice.

Any discretionary action of the Commissioner under this subsection shall be reviewable under section 10 of the Administrative Procedure Act. (Amended October 15, 1962, Public Law 87-831, 76 Stat. 958; and January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949.)

(d) Parties to a patent interference, within such time as may be specified by the Commissioner by regulation, may determine such contest or any aspect thereof by arbitration. Such arbitration shall be governed by the provisions of title 9 to the extent such title is not inconsistent with this section. The parties shall give notice of any arbitration award to the Commissioner, and such award shall, as between the parties to the arbitration, be dispositive of the issues to which it relates. The arbitration award shall be unenforceable until such notice is given. Nothing in this subsection shall preclude the Commissioner from determining patentability of the invention involved in the interference. (Added November 8, 1984, Public Law 98-622, sec. 105, 98 Stat. 3385.)

CHAPTER 13 — REVIEW OF PATENT AND TRADEMARK OFFICE DECISION

SEC.

141. Appeal to Court of Appeals for the Federal Circuit.
142. Notice of appeal.
143. Proceedings on appeal.
144. Decision on appeal.
145. Civil action to obtain patent.
146. Civil action in case of interference.

§ 141. Appeal to Court of Appeals for the Federal Circuit

An applicant dissatisfied with the decision in an appeal to the Board of Patent Appeals and Interferences under section 134 of this title may appeal the decision to the United States Court of Appeals for the Federal Circuit. By filing such an appeal the applicant waives his or her right to proceed under section 145 of this title. A party to an interference dissatisfied with the decision of the Board of Patent Appeals and Interferences on the interference may appeal the decision to the United States Court of Appeals for the Federal Circuit, but

such appeal shall be dismissed if any adverse party to such interference, within twenty days after the appellant has filed notice of appeal in accordance with section 142 of this title, files notice with the Commissioner that the party elects to have all further proceedings conducted as provided in section 146 of this title. If the applicant does not, within thirty days after filing of such notice by the adverse party, file a civil action under section 146, the decision appealed from shall govern the further proceedings in the case. (Amended November 8, 1984, Public Law 98-622, sec. 203(a), 98 Stat. 3387.)

§ 142. Notice of appeal

When an appeal is taken to the United States Court of Appeals for the Federal Circuit, the appellant shall file in the Patent and Trademark Office a written notice of appeal directed to the Commissioner, within such time after the date of the decision from which the appeal is taken as the Commissioner prescribes, but in no case less than 60 days after that date. (Amended November 8, 1984, Public Law 98-620, sec. 414(a), 98 Stat. 3363.)

§ 143. Proceedings on appeal

With respect to an appeal described in section 142 of this title, the Commissioner shall transmit to the United States Court of Appeals for the Federal Circuit a certified list of the documents comprising the record in the Patent and Trademark Office. The court may request that the Commissioner forward the original or certified copies of such documents during pendency of the appeal. In an ex parte case, the Commissioner shall submit to the court in writing the grounds for the decision of the Patent and Trademark Office, addressing all the issues involved in the appeal. The court shall, before hearing an appeal, give notice of the time and place of the hearing to the Commissioner and the parties in the appeal. (Amended November 8, 1984, Public Law 98-620, sec. 414(a), 98 Stat. 3363.)

§ 144. Decision on appeal

The United States Court of Appeals for the Federal Circuit shall review the decision from which an appeal is taken on the record before the Patent and Trademark Office. Upon its determination the court shall issue its mandate and opinion, which shall be entered of record in the Patent and Trademark Office and shall govern the

further proceedings in the case. (Amended November 8, 1984, Public Law 98-620, sec. 414(a), 98 Stat. 3363.)

§ 145. Civil action to obtain patent

An applicant dissatisfied with the decision of the Board of Patent Appeals and Interferences in an appeal under section 134 of this title may, unless appeal has been taken to the United States Court of Appeals for the Federal Circuit, have remedy by civil action against the Commissioner in the United States District Court for the District of Columbia if commenced within such time after such decision, not less than sixty days, as the Commissioner appoints. The court may adjudge that such applicant is entitled to receive a patent for his invention, as specified in any of his claims involved in the decision of the Board of Patent Appeals and Interferences, as the facts in the case may appear and such adjudication shall authorize the Commissioner to issue such patent on compliance with the requirements of law. All the expenses of the proceedings shall be paid by the applicant. (Amended November 8, 1984, Public Law 98-622, sec. 203(b), 98 Stat. 3387.)

§ 146. Civil action in case of interference

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

Such suit may be instituted against the party in interest as shown by the records of the Patent and Trademark Office at the time of the decision complained of, but any party in interest may become a party to the action. If there be adverse parties residing in a plurality of

districts not embraced within the same state, or an adverse party residing in a foreign country, the United States District Court for the District of Columbia shall have jurisdiction and may issue summons against the adverse parties directed to the marshal of any district in which any adverse party resides. Summons against adverse parties residing in foreign countries may be served by publication or otherwise as the court directs. The Commissioner shall not be a necessary party but he shall be notified of the filing of the suit by the clerk of the court in which it is filed and shall have the right to intervene. Judgment of the court in favor of the right of an applicant to a patent shall authorize the Commissioner to issue such patent on the filing in the Patent and Trademark Office of a certified copy of the judgment and on compliance with the requirements of law. (Amended January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949; April 2, 1982, Public Law 97-164, sec. 163, 96 Stat. 49; November 8, 1984, Public Law 98-622, sec. 203(c), 98 Stat. 3387.)

CHAPTER 14 — ISSUE OF PATENT

SEC.

151. Issue of patent.
152. Issue of patent to assignee.
153. How issued.
154. Contents and term of patent.
155. Patent term extension.
155A. Patent term restoration.
156. Extension of patent term.
157. Statutory invention registration.

§ 151. Issue of patent

If it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant. The notice shall specify a sum, constituting the issue fee or a portion thereof, which shall be paid within three months thereafter.

Upon payment of this sum the patent shall issue, but if payment is not timely made, the application shall be regarded as abandoned.

Any remaining balance of the issue fee shall be paid within three months from the sending of a notice thereof and, if not paid, the patent shall lapse at the termination of this three-month period. In

calculating the amount of a remaining balance, charges for a page or less may be disregarded.

If any payment required by this section is not timely made, but is submitted with the fee for delayed payment and the delay in payment is shown to have been unavoidable, it may be accepted by the Commissioner as though no abandonment or lapse had ever occurred. (Amended July 24, 1965, Public Law 89-83, secs. 4 and 6, 79 Stat. 260; and January 2, 1975, Public Law 93-601, sec. 3, 88 Stat. 1956.)

§ 152. Issue of patent to assignee

Patents may be granted to the assignee of the inventor of record in the Patent and Trademark Office, upon the application made and the specification sworn to by the inventor, except as otherwise provided in this title. (Amended January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949.)

§ 153. How issued

Patents shall be issued in the name of the United States of America, under the seal of the Patent and Trademark Office, and shall be signed by the Commissioner or have his signature placed thereon and attested by an officer of the Patent and Trademark Office designated by the Commissioner, and shall be recorded in the Patent and Trademark Office. (Amended January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949.)

§ 154. Contents and term of patent

Every patent shall contain a short title of the invention and a grant to the patentee, his heirs or assigns, for the term of seventeen years, subject to the payment of issue fees as provided for in this title, of the right to exclude others from making, using, or selling the invention throughout the United States, referring to the specification for the particulars thereof. A copy of the specification and drawings shall be annexed to the patent and be a part thereof. (Amended July 24, 1965, Public Law 89-83, sec. 5, 79 Stat. 261; December 12, 1980, Public Law 96-517, sec. 4, 94 Stat. 3018.)

§ 155. Patent term extension

Notwithstanding the provisions of section 154, the term of a patent which encompasses within its scope a composition of matter or a

process for using such composition shall be extended if such composition or process has been subjected to a regulatory review by the Federal Food and Drug Administration pursuant to the Federal Food, Drug and Cosmetic Act leading to the publication of regulation permitting the interstate distribution and sale of such composition or process and for which there has thereafter been a stay of regulation of approval imposed pursuant to Section 409 of the Federal Food, Drug and Cosmetic Act, which stay was in effect on January 1, 1981, by a length of time to be measured from the date such stay of regulation of approval was imposed until such proceedings are finally resolved and commercial marketing permitted. The patentee, his heirs, successors or assigns shall notify the Commissioner of Patents and Trademarks within 90 days of the date of enactment of this section or the date the stay of regulation of approval has been removed, whichever is later, of the number of the patent to be extended and the date the stay was imposed and the date commercial marketing was permitted. On receipt of such notice, the Commissioner shall promptly issue to the owner of record of the patent a certificate of extension, under seal, stating the fact and length of the extension and identifying the composition of matter or process for using such composition to which such extension is applicable. Such certificate shall be recorded in the official file of each patent extended and such certificate shall be considered as part of the original patent, and an appropriate notice shall be published in the Official Gazette of the Patent and Trademark Office. (Amended January 4, 1983, Public Law 97-414, 96 Stat. 2065.)

§ 155A. Patent term restoration

(a) Notwithstanding section 154 of this title, the term of each of the following patents shall be extended in accordance with this section:

(1) Any patent which encompasses within its scope a composition of matter which is a new drug product, if during the regulatory review of the product by the Federal Food and Drug Administration —

(A) the Federal Food and Drug Administration notified the patentee, by letter dated February 20, 1976, that such product's new drug application was not approvable under section 505(b)(1) of the Federal Food, Drug and Cosmetic Act;

(B) in 1977 the patentee submitted to the Federal Food and Drug Administration the results of a health effects test to evaluate the carcinogenic potential of such product;

(C) the Federal Food and Drug Administration approved, by letter dated December 18, 1979, the new drug application for such application; and

(D) the Federal Food and Drug Administration approved, by letter dated May 26, 1981, a supplementary application covering the facility for the production of such product.

(2) Any patent which encompasses within its scope a process for using the composition described in paragraph (1).

(b) The term of any patent described in subsection (a) shall be extended for a period equal to the period beginning February 20, 1976, and ending May 26, 1981, and such patent shall have the effect as if originally issued with such extended term.

(c) The patentee of any patent described in subsection (a) of this section shall, within ninety days after the date of enactment of this section, notify the Commissioner of Patents and Trademarks of the number of any patent so extended. On receipt of such notice, the Commissioner shall confirm such extension by placing a notice thereof in the official file of such patent and publishing an appropriate notice of such extension in the Official Gazette of the Patent and Trademark Office. (Added October 13, 1983, Public Law 98-127, sec. 4(a), 97 Stat. 832.)

§156. Extension of patent term

(a) The term of a patent which claims a product, a method of using a product, or a method of manufacturing a product shall be extended in accordance with this section from the original expiration date of the patent if—

(1) the term of the patent has not expired before an application is submitted under subsection (d) for its extension;

(2) the term of the patent has never been extended;

(3) an application for extension is submitted by the owner of record of the patent or its agent and in accordance with the requirements of subsection (d);

(4) the product has been subject to a regulatory review period before its commercial marketing or use;

(5)(A) except as provided in subparagraph (B), the permission for the commercial marketing or use of the product after such

regulatory review period is the first permitted commercial marketing or use of the product under the provision of law under which such regulatory review period occurred; or

(B) in the case of a patent which claims a method of manufacturing the product which primarily uses recombinant DNA technology in the manufacture of the product, the permission for the commercial marketing or use of the product after such regulatory review period is the first permitted commercial marketing or use of a product manufactured under the process claimed in the patent.

The product referred to in paragraphs (4) and (5) is hereinafter in this section referred to as the "approved product".

(b) The rights derived from any patent the term of which is extended under this section shall during the period during which the patent is extended —

(1) in the case of a patent which claims a product, be limited to any use approved for the approved product before the expiration of the term of the patent under the provision of law under which the applicable regulatory review occurred;

(2) in the case of a patent which claims a method of using a product, be limited to any use claimed by the patent and approved for the approved product before the expiration of the term of the patent under the provision of law under which the applicable regulatory review occurred; and

(3) in the case of a patent which claims a method of manufacturing a product, be limited to the method of manufacturing as used to make the approved product.

(c) The term of a patent eligible for extension under subsection (a) shall be extended by the time equal to the regulatory review period for the approved product which period occurs after the date the patent is issued, except that —

(1) each period of the regulatory review period shall be reduced by any period determined under subsection (d)(2)(B) during which the applicant for the patent extension did not act with due diligence during such period of the regulatory review period;

(2) after any reduction required by paragraph (1), the period of extension shall include only one-half of the time remaining in the periods described in paragraphs (1)(B)(i), (2)(B)(i), and (3)(B)(i) of subsection (g);

(3) if the period remaining in the term of a patent after the date of the approval of the approved product under the provision of law under which such regulatory review occurred when added to the regulatory review period as revised under paragraphs (1) and (2) exceeds fourteen years, the period of extension shall be reduced so that the total of both such periods does not exceed fourteen years; and

(4) in no event shall more than one patent be extended for the same regulatory review period for any product.

(d)(1) To obtain an extension of the term of a patent under this section, the owner of record of the patent or its agent shall submit an application to the Commissioner. Such an application may only be submitted within the sixty-day period beginning on the date the product received permission under the provision of law under which the applicable regulatory review period occurred for commercial marketing or use. The application shall contain —

(A) the identity of the approved product and the Federal statute under which regulatory review occurred;

(B) the identity of the patent for which an extension is being sought and the identity of each claim of such patent which claims the approved product or a method of using or manufacturing the approved product;

(C) information to enable the Commissioner to determine under subsections (a) and (b) the eligibility of a patent for extension and the rights that will be derived from the extension and information to enable the Commissioner and the Secretary of Health and Human Services to determine the period of the extension under subsection (g);

(D) a brief description of the activities undertaken by the applicant during the applicable regulatory review period with respect to the approved product and the significant dates applicable to such activities; and

(E) such patent or other information as the Commissioner may require.

(2)(A) Within sixty days of the submittal of an application for extension of the term of a patent under paragraph (1), the Commissioner shall notify the Secretary of Health and Human Services if the patent claims any human drug product, a medical device, or a food additive or color additive or a method of using

or manufacturing such a product, device, or additive and if the product, device, and additive are subject to the Federal Food, Drug, and Cosmetic Act, of the extension application and shall submit to the Secretary a copy of the application. Not later than thirty days after the receipt of an application from the Commissioner, the Secretary shall review the dates contained in the application pursuant to paragraph (1)(C) and determine the applicable regulatory review period, shall notify the Commissioner of the determination, and shall publish in the Federal Register a notice of such determination.

(B)(i) If a petition is submitted to the Secretary under subparagraph (A), not later than one hundred and eighty days after the publication of the determination under subparagraph (A), upon which it may reasonably be determined that the applicant did not act with due diligence during the applicable regulatory review period, the Secretary shall, in accordance with regulations promulgated by the Secretary determine if the applicant acted with due diligence during the applicable regulatory review period. The Secretary shall make such determination not later than ninety days after the receipt of such a petition. The Secretary may not delegate the authority to make the determination prescribed by this subparagraph to an office below the Office of the Commissioner of Food and Drugs.

(ii) The Secretary shall notify the Commissioner of the determination and shall publish in the Federal Register a notice of such determination together with the factual and legal basis for such determination. Any interested person may request, within the sixty-day period beginning on the publication of a determination, the Secretary to hold an informal hearing on the determination. If such a request is made within such period, the Secretary shall hold such hearing not later than thirty days after the date of the request, or at the request of the person making the request, not later than sixty days after such date. The Secretary shall provide notice of the hearing to the owner of the patent involved and to any interested person and provide the owner and any interested person an opportunity to participate in the hearing. Within thirty days after the completion of the hearing, the Secretary shall affirm or revise the determination which was the subject

of the hearing and notify the Commissioner of any revision of the determination and shall publish any such revision in the Federal Register.

(3) For the purposes of paragraph (2)(B), the term "due diligence" means that degree of attention, continuous directed effort, and timeliness as may reasonably be expected from, and are ordinarily exercised by, a person during a regulatory review period.

(4) An application for the extension of the term of a patent is subject to the disclosure requirements prescribed by the Commissioner.

(e)(1) A determination that a patent is eligible for extension may be made by the Commissioner solely on the basis of the representations contained in the application for the extension. If the Commissioner determines that a patent is eligible for extension under subsection (a) and that the requirements of subsection (d) have been complied with, the Commissioner shall issue to the applicant for the extension of the term of the patent a certificate of extension, under seal, for the period prescribed by subsection (c). Such certificate shall be recorded in the official file of the patent and shall be considered as part of the original patent.

(2) If the term of a patent for which an application has been submitted under subsection (d) would expire before a certificate of extension is issued or denied under paragraph (1) respecting the application, the Commissioner shall extend, until such determination is made, the term of the patent for periods of up to one year if he determines that the patent is eligible for extension.

(f) For purposes of this section:

(1) The term "product" means:

(A) A human drug product.

(B) Any medical device, food additive, or color additive subject to regulation under the Federal Food, Drug, and Cosmetic Act.

(2) The term "human drug product" means the active ingredient of a new drug, antibiotic drug, or human biological product (as those terms are used in the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act) including any salt or ester of the active ingredient, as a single entity or in combination with another active ingredient.

(3) The term "major health or environmental effects test" means a test which is reasonably related to the evaluation of the health or

environmental effects of a product, which requires at least six months to conduct, and the data from which is submitted to receive permission for commercial marketing or use. Periods of analysis or evaluation of test results are not to be included in determining if the conduct of a test required at least six months.

(4)(A) Any reference to section 351 is a reference to section 351 of the Public Health Service Act.

(B) Any reference to section 503, 505, 507, or 515 is a reference to section 503, 505, 507, or 515 of the Federal Food, Drug, and Cosmetic Act.

(5) The term "informal hearing" has the meaning prescribed for such term by section 201(y) of the Federal Food, Drug, and Cosmetic Act.

(6) The term "patent" means a patent issued by the United States Patent and Trademark Office.

(g) For purposes of this section, the term "regulatory review period" has the following meanings:

(1)(A) In the case of a product which is a human drug product, the term means the period described in subparagraph (B) to which the limitation described in paragraph (4) applies.

(B) The regulatory review period for a human drug product is the sum of —

(i) the period beginning on the date an exemption under subsection (i) of section 505 or subsection (d) of section 507 became effective for the approved human drug product and ending on the date an application was initially submitted for such drug product under section 351, 505, or 507, and

(ii) the period beginning on the date the application was initially submitted for the approved human drug product under section 351, subsection (b) of section 505, or section 507 and ending on the date such application was approved under such section.

(2)(A) In the case of a product which is a food additive or color additive, the term means the period described in subparagraph (B) to which the limitation described in paragraph (4) applies.

(B) The regulatory review period for a food or color additive is the sum of —

(i) the period beginning on the date a major health or environmental effects test on the additive was initiated and ending on the date a petition was initially submitted with

respect to the product under the Federal Food, Drug, and Cosmetic Act requesting the issuance of a regulation for use of the product, and

(ii) the period beginning on the date a petition was initially submitted with respect to the product under the Federal Food, Drug, and Cosmetic Act requesting the issuance of a regulation for use of the product, and ending on the date such regulation became effective or, if objections were filed to such regulation, ending on the date such objections were resolved and commercial marketing was permitted or, if commercial marketing was permitted and later revoked pending further proceedings as a result of such objections, ending on the date such proceedings were finally resolved and commercial marketing was permitted.

(3)(A) In the case of a product which is a medical device, the term means the period described in subparagraph (B) to which the limitation described in paragraph (4) applies.

(B) The regulatory review period for a medical device is the sum of —

(i) the period beginning on the date a clinical investigation on humans involving the device was begun and ending on the date an application was initially submitted with respect to the device under section 515, and

(ii) the period beginning on the date an application was initially submitted with respect to the device under section 515 and ending on the date such application was approved under such Act or the period beginning on the date a notice of completion of a product development protocol was initially submitted under section 515(f)(5) and ending on the date the protocol was declared completed under section 515(f)(6).

(4) A period determined under any of the preceding paragraphs is subject to the following limitations:

(A) If the patent involved was issued after the date of the enactment of this section, the period of extension determined on the basis of the regulatory review period determined under any such paragraph may not exceed five years.

(B) If the patent involved was issued before the date of the enactment of this section and —

(i) no request for an exemption described in paragraph (1)(B) was submitted,

(ii) no major health or environmental effects test described in paragraph (2) was initiated and no petition for a regulation or application for registration described in such paragraph was submitted, or

(iii) no clinical investigation described in paragraph (3) was begun or product development protocol described in such paragraph was submitted,

before such date for the approved product the period of extension determined on the basis of the regulatory review period determined under any such paragraph may not exceed five years.

(C) If the patent involved was issued before the date of the enactment of this section and if an action described in subparagraph (B) was taken before the date of enactment of this section with respect to the approved product and the commercial marketing or use of the product has not been approved before such date, the period of extension determined on the basis of the regulatory review period determined under such paragraph may not exceed two years.

(h) The Commissioner may establish such fees as the Commissioner determines appropriate to cover the costs to the Office of receiving and acting upon applications under this section. (Added September 24, 1984, Public Law 98-417, sec. 201, 98 Stat. 1598.)

§ 157. Statutory invention registration

(a) Notwithstanding any other provision of this title, the Commissioner is authorized to publish a statutory invention registration containing the specification and drawings of a regularly filed application for a patent without examination if the applicant —

(1) meets the requirements of section 112 of this title;

(2) has complied with the requirements for printing, as set forth in regulations of the Commissioner;

(3) waives the right to receive a patent on the invention within such period as may be prescribed by the Commissioner; and

(4) pays application, publication and other processing fees established by the Commissioner.

If an interference is declared with respect to such an application, a statutory invention registration may not be published unless the issue of priority of invention is finally determined in favor of the applicant.

(b) The waiver under subsection (a)(3) of this section by an applicant shall take effect upon publication of the statutory invention registration.

(c) A statutory invention registration published pursuant to this section shall have all of the attributes specified for patents in this title except those specified in section 183 and sections 271 through 289 of this title. A statutory invention registration shall not have any of the attributes specified for patents in any other provision of law other than this title. A statutory invention registration published pursuant to this section shall give appropriate notice to the public, pursuant to regulations which the Commissioner shall issue, of the preceding provisions of this subsection. The invention with respect to which a statutory invention certificate is published is not a patented invention for purposes of section 292 of this title.

(d) The Secretary of Commerce shall report to the Congress annually on the use of statutory invention registrations. Such report shall include an assessment of the degree to which agencies of the federal government are making use of the statutory invention registration system, the degree to which it aids the management of federally developed technology, and an assessment of the cost savings to the Federal Government of the use of such procedures. (Added November 8, 1984, Public Law 98-622, sec. 102, 98 Stat. 3383.)

CHAPTER 15 — PLANT PATENTS

SEC.

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

§ 161. Patents for plants

Whoever invents or discovers and asexually reproduces any distinct and new variety of plant, including cultivated sports, mutants, hybrids, and newly found seedlings, other than a tuber propagated plant or a plant found in an uncultivated state, may obtain a patent therefor, subject to the conditions and requirements of this title. (Amended September 3, 1954, 68 Stat. 1190.)

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

§ 162. Description, claim

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

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

§ 163. Grant

In the case of a plant patent the grant shall be of the right to exclude others from asexually reproducing the plant or selling or using the plant so reproduced.

§ 164. Assistance of Department of Agriculture

The President may by Executive order direct the Secretary of Agriculture, in accordance with the requests of the Commissioner, for the purpose of carrying into effect the provisions of this title with respect to plants (1) to furnish available information of the Department of Agriculture, (2) to conduct through the appropriate bureau or division of the Department research upon special problems, or (3) to detail to the Commissioner officers and employees of the Department.

CHAPTER 16 — DESIGNS

SEC.

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

§ 171. Patents for designs

Whoever invents any new, original and ornamental design for an article of manufacture may obtain a patent therefor, subject to the conditions and requirements of this title.

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

§ 172. Right of priority

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

§ 173. Term of design patent

Patents for designs shall be granted for the term of fourteen years. (Amended August 27, 1982, Public Law 97-247, sec. 16, 96 Stat. 321.)

CHAPTER 17 — SECRECY OF CERTAIN INVENTIONS AND FILING APPLICATIONS IN FOREIGN COUNTRIES

SEC.

181. Secrecy of certain inventions and withholding of patent.
182. Abandonment of invention for unauthorized disclosure.
183. Right to compensation.
184. Filing of application in foreign country.
185. Patent barred for filing without license.
186. Penalty.
187. Nonapplicability to certain persons.
188. Rules and regulations, delegation of power.

§ 181. Secrecy of certain inventions and withholding of patent

Whenever publication or disclosure by the grant of a patent on an invention in which the Government has a property interest might, in the opinion of the head of the interested Government agency, be detrimental to the national security, the Commissioner upon being so notified shall order that the invention be kept secret and shall withhold the grant of a patent therefor under the conditions set forth hereinafter.

Whenever the publication or disclosure of an invention by the granting of a patent, in which the Government does not have a property interest, might, in the opinion of the Commissioner, be detrimental to the national security, he shall make the application for patent in which such invention is disclosed available for inspection to the Atomic Energy Commission, the Secretary of Defense, and the chief officer of any other department or agency of the Government designated by the President as a defense agency of the United States.

Each individual to whom the application is disclosed shall sign a dated acknowledgment thereof, which acknowledgment shall be entered in the file of the application. If, in the opinion of the Atomic Energy Commission, the Secretary of a Defense Department, or the chief officer of another department or agency so designated, the publication or disclosure of the invention by the granting of a patent therefor would be detrimental to the national security, the Atomic Energy Commission, the Secretary of a Defense Department, or such

other chief officer shall notify the Commissioner and the Commissioner shall order that the invention be kept secret and shall withhold the grant of a patent for such period as the national interest requires, and notify the applicant thereof. Upon proper showing by the head of the department or agency who caused the secrecy order to be issued that the examination of the application might jeopardize the national interest, the Commissioner shall thereupon maintain the application in a sealed condition and notify the applicant thereof. The owner of an application which has been placed under a secrecy order shall have a right to appeal from the order to the Secretary of Commerce under rules prescribed by him.

An invention shall not be ordered kept secret and the grant of a patent withheld for a period of more than one year. The Commissioner shall renew the order at the end thereof, or at the end of any renewal period, for additional periods of one year upon notification by the head of the department or the chief officer of the agency who caused the order to be issued that an affirmative determination has been made that the national interest continues so to require. An order in effect, or issued, during a time when the United States is at war, shall remain in effect for the duration of hostilities and one year following cessation of hostilities. An order in effect, or issued, during a national emergency declared by the President shall remain in effect for the duration of the national emergency and six months thereafter. The Commissioner may rescind any order upon notification by the heads of the departments and the chief officers of the agencies who caused the order to be issued that the publication or disclosure of the invention is no longer deemed detrimental to the national security.

§ 182. Abandonment of invention for unauthorized disclosure

The invention disclosed in an application for patent subject to an order made pursuant to section 181 of this title may be held abandoned upon its being established by the Commissioner that in violation of said order the invention has been published or disclosed or that an application for a patent therefor has been filed in a foreign country by the inventor, his successors, assigns, or legal representatives, or anyone in privity with him or them, without the consent of the Commissioner. The abandonment shall be held to have occurred as of the time of violation. The consent of the Commissioner shall not be given without the concurrence of the heads of the departments

and the chief officers of the agencies who caused the order to be issued. A holding of abandonment shall constitute forfeiture by the applicant, his successors, assigns, or legal representatives, or anyone in privity with him or them, of all claims against the United States based upon such invention.

§ 183. Right to compensation

An applicant, his successors, assigns, or legal representatives, whose patent is withheld as herein provided, shall have the right, beginning at the date the applicant is notified that, except for such order, his application is otherwise in condition for allowance, or February 1, 1952, whichever is later, and ending six years after a patent is issued thereon, to apply to the head of any department or agency who caused the order to be issued for compensation for the damage caused by the order of secrecy and/or for the use of the invention by the Government, resulting from his disclosure. The right to compensation for use shall begin on the date of the first use of the invention by the Government. The head of the department or agency is authorized, upon the presentation of a claim, to enter into an agreement with the applicant, his successors, assigns, or legal representatives, in full settlement for the damage and/or use. This settlement agreement shall be conclusive for all purposes notwithstanding any other provision of law to the contrary. If full settlement of the claim cannot be effected, the head of the department or agency may award and pay to such applicant, his successors, assigns, or legal representatives, a sum not exceeding 75 per centum of the sum which the head of the department or agency considers just compensation for the damage and/or use. A claimant may bring suit against the United States in the United States Claims Court or in the District Court of the United States for the district in which such claimant is a resident for an amount which when added to the award shall constitute just compensation for the damage and/or use of the invention by the Government. The owner of any patent issued upon an application that was subject to a secrecy order issued pursuant to section 181 of this title, who did not apply for compensation as above provided, shall have the right, after the date of issuance of such patent, to bring suit in the United States Claims Court for just compensation for the damage caused by reason of the order of secrecy and/or use by the Government of the invention resulting from his disclosure. The right

to compensation for use shall begin on the date of the first use of the invention by the Government. In a suit under the provisions of this section the United States may avail itself of all defenses it may plead in an action under section 1498 of title 28. This section shall not confer a right of action on anyone or his successors, assigns, or legal representatives who, while in the full-time employment or service of the United States, discovered, invented, or developed the invention on which the claim is based. (Amended April 2, 1982, Public Law 97-164, sec. 160, 96 Stat. 48.)

§ 184. Filing of application in foreign country

Except when authorized by a license obtained from the Commissioner a person shall not file or cause or authorize to be filed in any foreign country prior to six months after filing in the United States an application for patent or for the registration of a utility model, industrial design, or model in respect of an invention made in this country. A license shall not be granted with respect to an invention subject to an order issued by the Commissioner pursuant to section 181 of this title without the concurrence of the head of the departments and the chief officers of the agencies who caused the order to be issued. The license may be granted retroactively where an application has been inadvertently filed abroad and the application does not disclose an invention within the scope of section 181 of this title.

The term "application" when used in this chapter includes applications and any modifications, amendments, or supplements thereto, or divisions thereof.

§ 185. Patent barred for filing without license

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

§ 186. Penalty

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

§ 187. Nonapplicability to certain persons

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

§ 188. Rules and regulations, delegation of power

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

CHAPTER [18] 38 — PATENT RIGHTS IN INVENTIONS MADE WITH FEDERAL ASSISTANCE

SEC.

200. Policy and objective.
201. Definitions.
202. Disposition of rights.
203. March-in rights.
204. Preference for United States industry.
205. Confidentiality.
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§ 200. Policy and objective

It is the policy and objective of the Congress to use the patent system to promote the utilization of inventions arising from federally supported research or development; to encourage maximum participation of small business firms in federally supported research and development efforts; to promote collaboration between commercial concerns and nonprofit organizations, including universities; to ensure that inventions made by nonprofit organizations and small business firms are used in a manner to promote free competition and enterprise; to promote the commercialization and public availability of inventions made in the United States by United States industry and labor; to ensure that the Government obtains sufficient rights in federally supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions; and to minimize the costs of administering policies in this area. (Added December 12, 1980, Public Law 96-517, sec. 6(a), 94 Stat. 3019.)

§ 201. Definitions

As used in this chapter —

(a) The term "Federal agency" means any executive agency as defined in section 105 of title 5, United States Code, and the military departments as defined by section 102 of title 5, United States Code.

(b) The term "funding agreement" means any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal Government. Such term includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as herein defined.

(c) The term "contractor" means any person, small business firm, or nonprofit organization that is a party to a funding agreement.

(d) The term "invention" means any invention or discovery which is or may be patentable or otherwise protectable under this title or any novel variety of plant which is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.). (Amended November 8, 1984. Public Law 98-620, sec. 501(1), 98 Stat. 3364.)

(e) The term "subject invention" means any invention of the contractor conceived or first actually reduced to practice in the performance of work under a funding agreement: *Provided,* That in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act (7 U.S.C. 2401(d)) must also occur during the period of contract performance. (Amended November 8, 1984, Public Law 98-620, sec. 501(2), 98 Stat. 3364.)

(f) The term "practical application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms.

(g) The term "made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(h) The term "small business firm" means a small business concern as defined at section 2 of Public Law 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration.

(i) The term "nonprofit organization" means universities and other institutions of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a State nonprofit organization statute. (Added December 12, 1980, Public Law 96-517, sec. 6(a), 94 Stat. 3019.)

§ 202. Disposition of rights

(a) Each nonprofit organization or small business firm may, within a reasonable time after disclosure as required by paragraph (c)(1) of

this section, elect to retain title to any subject invention: *Provided, however,* That a funding agreement may provide otherwise (i) when the contractor is not located in the United States or does not have a place of business located in the United States or is subject to the control of a foreign government, (ii) in exceptional circumstances when it is determined by the agency that restriction or elimination of the right to retain title to any subject invention will better promote the policy and objectives of this chapter, (iii) when it is determined by a Government authority which is authorized by statute or Executive order to conduct foreign intelligence or counter-intelligence activities that the restriction or elimination of the right to retain title to any subject invention is necessary to protect the security of such activities, or (iv) when the funding agreement includes the operation of a Government-owned, contractor-operated facility of the Department of Energy primarily dedicated to that Department's naval nuclear propulsion or weapons related programs and all funding agreement limitations under this subparagraph on the contractor's right to elect title to a subject invention are limited to inventions occurring under the above two programs of the Department of Energy. The rights of the nonprofit organization or small business firm shall be subject to the provisions of paragraph (c) of this section and the other provisions of this chapter. (Amended Novmber 8, 1984, Public Law 98-620, sec. 501(3), 98 Stat. 3364.)

(b)(1) The rights of the Government under subsection (a) shall not be exercised by a Federal agency unless it first determines that at least one of the conditions identified in clauses (i) through (iii) of subsection (a) exists. Except in the case of subsection (a)(iii), the agency shall file with the Secretary of Commerce, within thirty days after the award of the applicable funding agreement, a copy of such determination. In the case of a determination under subsection (a)(ii), the statement shall include an analysis justifying the determination. In the case of determinations applicable to funding agreements with small business firms, copies shall also be sent to the Chief Counsel for Advocacy of the Small Business Administration. If the Secretary of Commerce believes that any individual determination or pattern of determinations is contrary to the policies and objectives of this chapter or otherwise not in conformance with this chapter, the Secretary shall so advise the head of the agency concerned and the Administrator of the Office of Federal Procurement Policy, and recommend corrective actions.

(2) Whenever the Administrator of the Office of Federal Procurement Policy has determined that one or more Federal agencies are utilizing the authority of clause (i) or (ii) of subsection (a) of this section in a manner that is contrary to the policies and objectives of this chapter the Administrator is authorized to issue regulations describing classes of situations in which agencies may not exercise the authorities of those clauses. Amended November 8, 1984, Public Law 98-620, sec. 501(4), 98 Stat. 3365.)

(3) At least once each year, the Comptroller General shall transmit a report to the Committees on the Judiciary of the Senate and House of Representatives on the manner in which this chapter is being implemented by the agencies and on such other aspects of Government patent policies and practices with respect to federally funded inventions as the Comptroller General believes appropriate.

(4) If the contractor believes that a determination is contrary to the policies and objectives of this chapter or constitutes an abuse of discretion by the agency, the determination shall be subject to the last paragraph of section 203(2). (Added November 8, 1984, Public Law 98-620, sec. 501(4A), 98 Stat. 3365.)

(c) Each funding agreement with a small business firm or nonprofit organization shall contain appropriate provisions to effectuate the following:

(1) That the contractor disclose each subject invention to the Federal agency within a reasonable time after it becomes known to contractor personnel responsible for the administration of patent matters, and that the Federal Government may receive title to any subject invention not disclosed to it within such time.

(2) That the contractor make a written election within two years after disclosure to the Federal agency (or such additional time as may be approved by the Federal agency) whether the contractor will retain title to a subject invention: *Provided,* That in any case where publication, on sale, or public use, has initiated the one year statutory period in which valid patent protection can still be obtained in the United States, the period for election may be shortened by the Federal agency to a date that is not more than sixty days prior to the end of the statutory period: *And provided further,* That the Federal Government may receive title to any subject invention in which the contractor does not elect to retain rights or fails to elect rights within such times.

(3) That a contractor electing rights in a subject invention agrees

to file a patent application prior to any statutory bar date that may occur under this title due to publication, on sale, or public use, and shall thereafter file corresponding patent applications in other countries in which it wishes to retain title within reasonable times, and that the Federal Government may receive title to any subject inventions in the United States or other countries in which the contractor has not filed patent applications on the subject invention within such times.

(4) With respect to any invention in which the contractor elects rights, the Federal agency shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any subject invention throughout the world: *Provided,* That the funding agreement may provide for such additional rights; including the right to assign or have assigned foreign patent rights in the subject invention, as are determined by the agency as necessary for meeting the obligations of the United States under any treaty, international agreement, arrangement of cooperation, memorandum of understanding, or similar arrangement, including military agreements relating to weapons development and production. (Amended November 8, 1984, Public Law 98-620, sec. 501(5), 98 Stat. 3365.)

(5) The right of the Federal agency to require periodic reporting on the utilization or efforts at obtaining utilization that are being made by the contractor or his licensees or assignees: *Provided,* That any such information, as well as any information on utilization or efforts at obtaining utilization obtained as part of a proceeding under section 203 of this chapter shall be treated by the Federal agency as commercial and financial information obtained from a person and privileged and confidential and not subject to disclosure under section 552 of title 5 of the United States Code. (Amended November 8, 1984, Public Law 98-620, sec. 501(6), 98 Stat. 3365.)

(6) An obligation on the part of the contractor, in the event a United States patent application is filed by or on its behalf or by any assignee of the contractor, to include within the specification of such application and any patent issuing thereon, a statement specifying that the invention was made with Government support and that the Government has certain rights in the invention.

(7) In the case of a nonprofit organization, (A) a prohibition upon the assignment of rights to a subject invention in the United

States without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions (provided that such assignee shall be subject to the same provisions as the contractor); (B) a requirement that the contractor share royalties with the inventor; (C) except with respect to a funding agreement for the operation of a Government-owned-contractor-operated facility, a requirement that the balance of any royalties or income earned by the contractor with respect to subject inventions, after payment of expenses, (including payments to inventors) incidental to the administration of subject inventions, be utilized for the support of scientific research, or education; (D) a requirement that, except where it proves infeasible after a reasonable inquiry, in the licensing of subject inventions shall be given to small business firms; and (E) with respect to a funding agreement for the operation of a Government-owned-contractor-operator facility, requirements (i) that after payment of patenting costs, licensing costs, payments to inventors, and other expenses incidental to the administration of subject inventions, 100 percent of the balance of any royalties or income earned and retained by the contractor during any fiscal year, up to an amount equal to five percent of the annual budget of the facility, shall be used by the contractor for scientific research, development, and education consistent with the research and development mission and objectives of the facility, including activities that increase the licensing potential of other inventions of the facility provided that if said balance exceeds five percent of the annual budget of the facility, that 75 percent of such excess shall be paid to the Treasury of the United States and the remaining 25 percent shall be used for the same purposes as described above in this clause (D); and (ii) that, to the extent it provides the most effective technology transfer, the licensing of subject inventions shall be administered by contractor employees on location at the facility. (Amended November 8, 1984, Public Law 98-620, sec. 501(7), (8), 98 Stat. 3366.)

(8) The requirements of sections 203 and 204 of this chapter.

(d) If a contractor does not elect to retain title to a subject invention in cases subject to this section, the Federal agency may consider and after consultation with the contractor grant requests for retention of rights by the inventor subject to the provisions of this Act and regulations promulgated hereunder.

(e) In any case when a Federal employee is a coinventor of any invention made under a funding agreement with a nonprofit organization or small business firm, the Federal agency employing such coinventor is authorized to transfer or assign whatever rights it may acquire in the subject invention from its employee to the contractor subject to the conditions set forth in this chapter.

(f)(1) No funding agreement with a small business firm or nonprofit organization shall contain a provision allowing a Federal agency to require the licensing to third parties of inventions owned by the contractor that are not subject inventions unless such provision has been approved by the head of the agency and a written justification has been signed by the head of the agency. Any such provision shall clearly state whether the licensing may be required in connection with the practice of a subject invention, a specifically identified work object, or both. The head of the agency may not delegate the authority to approve provisions or sign justifications required by this paragraph.

(2) A Federal agency shall not require the licensing of third parties under any such provision unless the head of the agency determines that the use of the invention by others is necessary for the practice of a subject invention or for the use of a work object of the funding agreement and that such action is necessary to achieve the practical application of the subject invention or work object. Any such determination shall be on the record after an opportunity for an agency hearing. Any action commenced for judicial review of such determination shall be brought within sixty days after notification of such determination. (Added December 12, 1980, Public Law 96-517, sec. 6(a), 94 Stat. 3020.)

§ 203. March-in rights

(1) With respect to any subject invention in which a small business firm or nonprofit organization has acquired title under this chapter, the Federal agency under whose funding agreement the subject invention was made shall have the right, in accordance with such procedures as are provided in regulations promulgated hereunder to require the contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the contractor, assignee, or exclusive licensee refuses such request, to

grant such a license itself, if the Federal agency determines that such —

(a) action is necessary because the contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(b) action is necessary to alleviate health or safety needs which are not reasonably satisfied by the contractor, assignee, or their licensees;

(c) action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the contractor, assignee, or licensees; or

(d) action is necessary because the agreement required by section 204 has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of its agreement obtained pursuant to section 204.

(2) A determination pursuant to this section or section 202(b)(4) shall not be subject to the Contract Disputes Act (41 U.S.C. §601 et seq.). An administrative appeals procedure shall be established by regulations promulgated in accordance with section 206. Additionally, any contractor, inventor, assignee, or exclusive licensee adversely affected by a determination under this section may, at any time within sixty days after the determination is issued, file a petition in the United States Claims Court, which shall have jurisdiction to determine the appeal on the record and to affirm, reverse, remand or modify, as appropriate, the determination of the Federal agency. In cases described in paragraphs (a) and (c), the agency's determination shall be held in abeyance pending the exhaustion of appeals or petitions filed under the preceding sentence. (Added December 12, 1980, Public Law 96-517, sec. 6(a), 94 Stat. 3022; amended November 8, 1984, Public Law 98-620, sec. 501(9), 98 Stat. 3367.)

§ 204. Preference for United States industry

Notwithstanding any other provision of this chapter, no small business firm or nonprofit organization which receives title to any subject invention and no assignee of any such small business firm or nonprofit organization shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention or

produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal agency under whose funding agreement the invention was made upon a showing by the small business firm, nonprofit organization, or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible. (Added December 12, 1980, Public Law 96-517, sec. 6(a), 94 Stat. 3023.)

§ 205. Confidentiality

Federal agencies are authorized to withhold from disclosure to the public information disclosing any invention in which the Federal Government owns or may own a right, title, or interest (including a nonexclusive license) for a reasonable time in order for a patent application to be filed. Furthermore, Federal agencies shall not be required to release copies of any document which is part of an application for patent filed with the United States Patent and Trademark Office or with any foreign patent office. (Added December 12, 1980, Public Law 96-517, sec. 6(a), 94 Stat. 3023.)

§ 206. Uniform clauses and regulations

The Secretary of Commerce may issue regulations which may be made applicable to Federal agencies implementing the provisions of sections 202 through 204 of this chapter and shall establish standard funding agreement provisions required under this chapter. The regulations and the standard funding agreement shall be subject to public comment before their issuance. (Amended November 8, 1984, Public Law 98-620, sec. 501(10), 98 Stat. 3367.)

§ 207. Domestic and foreign protection of federally owned inventions

(a) Each Federal agency is authorized to —

(1) apply for, obtain, and maintain patents or other forms of protection in the United States and in foreign countries on inventions in which the Federal Government owns a right, title, or interest;

(2) grant nonexclusive, exclusive, or partially exclusive licenses under federally owned patent applications, patents, or other forms of protection obtained, royalty-free or for royalties or other consideration, and on such terms and conditions, including the grant to the licensee of the right of enforcement pursuant to the provisions of chapter 29 of this title as determined appropriate in the public interest;

(3) undertake all other suitable and necessary steps to protect and administer rights to federally owned inventions on behalf of the Federal Government either directly or through contract; and

(4) transfer custody and administration, in whole or in part, to another Federal agency, of the right, title, or interest in any federally owned invention.

(b) For the purpose of assuring the effective management of Government-owned inventions, the Secertary of Commerce [is] authorized to —

(1) assist Federal agency efforts to promote the licensing and utilization of Government-owned inventions;

(2) assist Federal agencies in seeking protection and maintaining inventions in foreign countries, including the payment of fees and costs connected therewith; and

(3) consult with and advise Federal agencies as to areas of science and technology research and development with potential for commercial utilization. (Added December 12, 1980, Public Law 96-517, sec. 6(a), 94 Stat. 3023, Amended November 8, 1984, Public Law 98-620, sec. 501(11), 98 Stat. 3367.)

§ 208. Regulations governing Federal licensing

The Secretary of Commerce is authorized to promulgate regulations specifying the terms and conditions upon which any federally owned invention, other than inventions owned by the Tennessee Valley Authority, may be licensed on a nonexclusive, partially exclusive, or exclusive basis. (Added December 12, 1980, Public Law 96-517, sec. 6(a), 94 Stat. 3024; Amended November 8, 1984, Public Law 98-620, sec. 501(12), 98 Stat. 3367.)

§ 209. Restrictions on licensing of federally owned inventions

(a) No Federal agency shall grant any license under a patent or patent application on a federally owned invention unless the person

requesting the license has supplied the agency with a plan for development and/or marketing of the invention, except that any such plan may be treated by the Federal agency as commercial and financial information obtained from a person and privileged and confidential and not subject to disclosure under section 552 of title 5 of the United States Code.

(b) A Federal agency shall normally grant the right to use or sell any federally owned invention in the United States only to a licensee that agrees that any products embodying the invention or produced through the use of the invention will be manufactured substantially in the United States.

(c)(1) Each Federal agency may grant exclusive or partially exclusive licenses in any invention covered by a federally owned domestic patent or patent application only if, after public notice and opportunity for filing written objections, it is determined that—

(A) the interests of the Federal Government and the public will best be served by the proposed license, in view of the applicant's intentions, plans, and ability to bring the invention to practical application or otherwise promote the invention's utilization by the public;

(B) the desired practical application has not been achieved, or is not likely expeditiously to be achieved, under any nonexclusive license which has been granted, or which may be granted, on the invention;

(C) exclusive or partially exclusive licensing is a reasonable and necessary incentive to call forth the investment of risk capital and expenditures to bring the invention to practical application or otherwise promote the invention's utilization by the public; and

(D) the proposed terms and scope of exclusivity are not greater than reasonably necessary to provide the incentive for bringing the invention to practical application or otherwise promote the invention's utilization by the public.

(2) A Federal agency shall not grant such exclusive or partially exclusive license under paragraph (1) of this subsection if it determines that the grant of such license will tend substantially to lessen competition or result in undue concentration in any section of the country in any line of commerce to which the technology to be licensed relates, or to create or maintain other situations inconsistent with the antitrust laws.

(3) First preference in the exclusive or partially exclusive licensing of federally owned inventions shall go to small business firms submitting plans that are determined by the agency to be within the capabilities of the firms and equally likely, if executed, to bring the invention to practical application as any plans submitted by applicants that are not small business firms.

(d) After consideration of whether the interests of the Federal Government or United States industry in foreign commerce will be enhanced, any Federal agency may grant exclusive or partially exclusive licenses in any invention covered by a foreign patent application or patent, after public notice and opportunity for filing written objections, except that a Federal agency shall not grant such exclusive or partially exclusive license if it determines that the grant of such license will tend substantially to lessen competition or result in undue concentration in any section of the United States in any line of commerce to which the technology to be licensed relates, or to create or maintain other situations inconsistent with antitrust laws.

(e) The Federal agency shall maintain a record of determinations to grant exclusive or partially exclusive licenses.

(f) Any grant of a license shall contain such terms and conditions as the Federal agency determines appropriate for the protection of the interests of the Federal Government and the public, including provisions for the following:

(1) periodic reporting on the utilization or efforts at obtaining utilization that are being made by the licensee with particular reference to the plan submitted: *Provided,* That any such information may be treated by the Federal agency as commercial and financial information obtained from a person and privileged and confidential and not subject to disclosure under section 552 of title 5 of the United States Code;

(2) the right of the Federal agency to terminate such license in whole or in part if it determines that the licensee is not executing the plan submitted with its request for a license and the licensee cannot otherwise demonstrate to the satisfaction of the Federal agency that it has taken or can be expected to take within a reasonable time, effective steps to achieve practical application of the invention;

(3) the right of the Federal agency to terminate such license in whole or in part if the licensee is in breach of an agreement obtained pursuant to paragraph (b) of this section; and

(4) the right of the Federal agency to terminate the license in whole or in part if the agency determines that such action is necessary to meet requirements for public use specified by Federal regulations issued after the date of the license and such requirements are not reasonably satisfied by the licensee. (Added December 12, 1980 Public Law 96-517, sec. 6(a), 94 Stat. 3024.)

§ 210. Precedence of chapter

(a) This chapter shall take precedence over any other Act which would require a disposition of rights in subject inventions of small business firms or nonprofit organizations contractors in a manner that is inconsistent with this chapter, including but not necessarily limited to the following:

(1) section 10(a) of the Act of June 29, 1935, as added by title I of the Act of August 14, 1946 (7 U.S.C. 427i(a); 60 Stat. 1085);

(2) section 205(a) of the Act of August 14, 1946 (7 U.S.C. 1624(a); 60 Stat. 1090);

(3) section 501(c) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 951(c); 83 Stat. 742);

(4) section 106(c) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1395(c); 80 Stat. 721);

(5) section 12 of the National Science Foundation Act of 1950 (42 U.S.C. 1871(a); 82 Stat. 360);

(6) section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182; 68 Stat. 943);

(7) section 305 of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457);

(8) section 6 of the Coal Research Development Act of 1960 (30 U.S.C. 666; 74 Stat. 337);

(9) section 4 of the Helium Act Amendments of 1960 (50 U.S.C. 167b; 74 Stat. 920);

(10) section 32 of the Arms Control and Disarmament Act of 1961 (22 U.S.C. 2572; 75 Stat. 634);

(11) subsection (e) of section 302 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App. 302(e); 79 Stat. 5);

(12) section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5901; 88 Stat. 1878);

(13) section 5(d) of the Consumer Product Safety Act (15 U.S.C. 2054(d); 86 Stat. 1211);

(14) section 3 of the Act of April 5, 1944 (30 U.S.C. 323; 58 Stat. 191);

(15) section 8001(c)(3) of the Solid Waste Disposal Act (42 U.S.C. 6981(c); 90 Stat. 2829);

(16) section 219 of the Foreign Assistance Act of 1961 (22 U.S.C. 2179; 83 Stat. 806);

(17) section 427(b) of the Federal Mine Health and Safety Act of 1977 (30 U.S.C. 937(b); 86 Stat. 155);

(18) section 306(d) of the Surface Mining and Reclamation Act of 1977 (30 U.S.C. 1226(d); 91 Stat. 455);

(19) section 21(d) of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2218(d); 88 Stat. 1548);

(20) section 6(b) of the Solar Photovoltaic Energy Research Development and Demonstration Act of 1978 (42 U.S.C. 5585(b); 92 Stat. 2516);

(21) section 12 of the Native Latex Commercialization and Economic Development Act of 1978 (7 U.S.C. 178(j); 92 Stat. 2533); and

(22) section 408 of the Water Resources and Development Act of 1978 (42 U.S.C. 7879; 92 Stat. 1360).

The Act creating this chapter shall be construed to take precedence over any future Act unless that Act specifically cites this Act and provides that it shall take precedence over this Act.

(b) Nothing in this chapter is intended to alter the effect of the laws cited in paragraph (a) of this section or any other laws with respect to the disposition of rights in inventions made in the performance of funding agreements with persons other than nonprofit organizations or small business firms.

(c) Nothing in this chapter is intended to limit the authority of agencies to agree to the disposition of rights in inventions made in the performance of work under funding agreements with persons other than nonprofit organizations or small business firms in accordance with the Statement of Government Patent Policy issued on February 18, 1983, agency regulations, or other applicable regulations or to otherwise limit the authority of agencies to allow such persons to retain ownership of inventions, except that all funding agreements, including those with other than small business firms and nonprofit organizations, shall include the requirements established in paragraph 202(c)(4) and section 203 of this title. Any disposition of rights in inventions made in accordance with the Statement or implementing

regulations, including any disposition occurring before enactment of this section, are hereby authorized. (Amended November 8, 1984, Public Law 98-620, sec. 501(13), 98 Stat. 3367.)

(d) Nothing in this chapter shall be construed to require the disclosure of intelligence sources or methods or to otherwise affect the authority granted to the Director of Central Intelligence by statute or Executive order for the protection of intelligence sources or methods. (Added December 12, 1980, Public Law 96-517, sec. 6(a), 94 Stat. 3026.)

§ 211. Relationship to antitrust laws

Nothing in this chapter shall be deemed to convey to any person immunity from civil or criminal liability, or to create any defenses to actions, under any antitrust law. (Added December 12, 1980, Public Law 96-517, sec. 6(a), 94 Stat. 3027.)

§ 212. Disposition of rights in educational awards

No scholarship, fellowship, training grant, or other funding agreement made by a Federal agency primarily to an awardee for educational purposes will contain any provision giving the Federal agency any rights to inventions made by the awardee. (Added November 8, 1984, Public Law 98-620, sec. 501(14), 98 Stat. 3368.)

PART III — PATENTS AND PROTECTION OF PATENT RIGHTS

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CHAPTER 25 — AMENDMENT AND CORRECTION OF PATENTS

SEC.

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

§ 251. Reissue of defective patents

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

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

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

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

§ 252. Effect of reissue

The surrender of the original patent shall take effect upon the issue of the reissued patent, and every reissued patent shall have the same effect and operation in law, on the trial of actions for causes thereafter arising, as if the same have been originally granted in such amended form, but insofar as the claims or the original and reissued patents are indentical, such surrender shall not affect any action then pending nor abate any cause of action then existing, and the reissued patent, to the extent that its claims are identical with the original patent, shall constitute a continuation thereof and have effect continuously from the date of the original patent.

No reissued patent shall abridge or affect the right of any person or his successors in business who made, purchased or used prior to the grant of a reissue anything patented by the reissued patent, to

continue the use of, or to sell to others to be used or sold, the specific thing so made, purchased or used, unless the making, using or selling of such thing infringes a valid claim of the reissued patent which was in the original patent. The court before which such matter is in question may provide for the continued manufacture, use or sale of the thing made, purchased or used as specified, or for the manufacture, use or sale of which substantial preparation was made before the grant of the reissue, and it may also provide for the continued practice of any process patented by the reissue, practiced, or for the practice of which substantial preparation was made, prior to the grant of the reissue, to the extent and under such terms as the court deems equitable for the protection of investments made or business commenced before the grant of the reissue.

§ 253. Disclaimer

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

In like manner any patentee or applicant may disclaim or dedicate to the public the entire term, or any terminal part of the term, of the patent granted or to be granted. (Amended January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949.)

§ 254. Certificate of correction of Patent and Trademark Office mistake

Whenever a mistake in a patent, incurred through the fault of the Patent and Trademark Office, is clearly disclosed by the records of the Office, the Commissioner may issue a certificate of correction stating the fact and nature of such mistake, under seal, without charge, to be recorded in the records of patents. A printed copy thereof shall be attached to each printed copy of the patent, and such certificate shall be considered as part of the original patent. Every

such patent, together with such certificate, shall have the same effect and operation in law on the trial of actions for causes thereafter arising as if the same had been originally issued in such corrected form. The Commissioner may issue a corrected patent without charge in lieu of and with like effect as a certificate of correction. (Amended January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949.)

§ 255. Certificate of correction of applicant's mistake

Whenever a mistake of a clerical or typographical nature, or of minor character, which was not the fault of the Patent and Trademark Office, appears in a patent and a showing has been made that such mistake occurred in good faith, the Commissioner may, upon payment of the required fee, issue a certificate of correction, if the correction does not involve such changes in the patent as would constitute new matter or would require reexamination. Such patent, together with the certificate, shall have the same effect and operation in law on the trial of actions for causes thereafter arising as if the same had been originally issued in such corrected form. (Amended January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949.)

§ 256. Correction of named inventor

Whenever through error a person is named in an issued patent as the inventor, or through error an inventor is not named in an issued patent and such error arose without any deceptive intention on his part, the Commissioner may, on application of all the parties and assignees, with proof of the facts and such other requirements as may be imposed, issue a certificate correcting such error.

The error of omitting inventors or naming persons who are not inventors shall not invalidate the patent in which such error occurred if it can be corrected as provided in this section. The court before which such matter is called in question may order correction of the patent on notice and hearing of all parties concerned and the Commissioner shall issue a certificate accordingly. (Amended August 27, 1982, Public Law 97-247, sec. 6(b), 96 Stat. 320.)

CHAPTER 26 — OWNERSHIP AND ASSIGNMENT

SEC.

261. Ownership; assignment.
262. Joint owners.

§ 261. Ownership; assignment

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

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

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

An assignment, grant or conveyance shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, unless it is recorded in the Patent and Trademark Office within three months from its date or prior to the date of such subsequent purchase or mortgage. (Amended January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949; August 27, 1982, Public Law 97-247, sec. 14(b), 96 Stat. 321.)

§ 262. Joint owners

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

CHAPTER 27 — GOVERNMENT INTERESTS IN PATENTS

SEC.

266. [Repealed.]
267. Time for taking action in Government applications.

§ 266. Issue of patents without fees to Government employees

(Repealed July 24, 1965, Public Law 89-83, sec. 8, 79 Stat. 261.)

§ 267. Time for taking action in Government applications

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

CHAPTER 28 — INFRINGEMENT OF PATENTS

SEC.

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

§ 271. Infringement of patent

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

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

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

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

(e)(1) It shall not be an act of infringement to make, use, or sell a patented invention (other than a new animal drug or veterinary biological product (as those terms are used in the Federal Food, Drug, and Cosmetic Act and the Act of March 4, 1913)) solely for uses reasonably related to the development and submission of information under a Federal law which regulates the manufacture, use, or sale of drugs.

(2) It shall be an act of infringement to submit an application under section 505(j) of the Federal Food, Drug, and Cosmetic Act or described in section 505(b)(2) of such Act for a drug claimed in a patent or the use of which is claimed in a patent, if the purpose of such submission is to obtain approval under such Act to engage in the commercial manufacture, use, or sale of a drug claimed in a patent or the use of which is claimed in a patent before the expiration of such patent.

(3) In any action for patent infringement brought under this section, no injunctive or other relief may be granted which would prohibit the making, using, or selling of a patented invention under paragraph (1).

(4) For an act of infringement described in paragraph (2) —

(A) the court shall order the effective date of any approval of the drug involved in the infringement to be a date which is not earlier than the date of the expiration of the patent which has been infringed,

(B) injunctive relief may be granted against an infringer to prevent the commercial manufacture, use, or sale of an approved drug, and

(C) damages or other monetary relief may be awarded against an infringer only if there has been commercial manufacture, use, or sale of an approved drug.

The remedies prescribed by subparagraphs (A), (B), and (C) are the only remedies which may be granted by a court for an act of infringement described in paragraph (2), except that a court may award attorney fees under section 285. (Added September 24, 1984, Public Law 98-417, sec. 202, 98 Stat. 1603.)

(f)(1) Whoever without authority supplies or causes to be supplied in or from the United States all or a substantial portion of the components of a patented invention, where such components are uncombined in whole or in part, in such manner as to actively induce the combination of such components outside of the United

States in a manner that would infringe the patent if such combination occurred within the United States, shall be liable as an infringer.

(2) Whoever without authority supplies or causes to be supplied in or from the United States any component of a patented invention that is especially made or especially adapted for use in the invention and not a staple article or commodity of commerce suitable for substantial noninfringing use, where such component is uncombined in whole or in part, knowing that such component is so made or adapted and intending that such component will be combined outside of the United States in a manner that would infringe the patent if such combination occurred within the United States, shall be liable as an infringer. (Added November 8, 1984, Public Law 98-622, sec. 101, 98 Stat. 3383.)

§ 272. Temporary presence in the United States

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

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

SEC.

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

§ 281. Remedy for infringement of patent

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

§ 282. Presumption of validity; defenses

A patent shall be presumed valid. Each claim of a patent (whether in independent, dependent, or multiple dependent form) shall be presumed valid independently of the validity of other claims; dependent or multiple dependent claims shall be presumed valid even though dependent upon an invalid claim. The burden of establishing invalidity of a patent or any claim thereof shall rest on the party asserting such invalidity.

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

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

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

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

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

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

Invalidity of the extension of a patent term or any portion thereof under section 156 of this title because of the material failure —

(1) by the applicant for the extension, or

(2) by the Commissioner,

to comply with the requirements of such section shall be a defense in

any action involving the infringement of a patent during the period of the extension of its term and shall be pleaded. A due diligence determination under section 156(d)(2) is not subject to review in such an action (Amended July 24, 1965, Public Law 89-83, sec. 10, 79 Stat. 261; November 24, 1975, Public Law 94-131, sec. 10, 89 Stat. 692; September 24, 1984, Public Law 98-417, sec. 203, 98 Stat. 1603.)

§ 283. Injunction

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

§ 284. Damages

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

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

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

§ 285. Attorney fees

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

§ 286. Time limitation on damages

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

In the case of claims against the United States Government for use of a patented invention, the period before bringing suit, up to six years, between the date of receipt of a written claim for compensation by the department or agency of the Government having authority to settle such claim, and the date of mailing by the Government of a no-

tice to the claimant that his claim has been denied shall not be counted as part of the period referred to in the preceding paragraph.

§ 287. Limitation on damages; marking and notice

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

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

Whenever, without deceptive intention, a claim of a patent is invalid, an action may be maintained for the infringement of a claim of the patent which may be valid. The patentee shall recover no costs unless a disclaimer of the invalid claim has been entered at the Patent and Trademark Office before the commencement of the suit. (Amended January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949.)

§ 289. Additional remedy for infringement of design patent

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

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

§ 290. Notice of patent suits

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

§ 291. Interfering patents

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

§ 292. False marking

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

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

Whoever marks upon, or affixes to, or uses in advertising in connection with any article, the words "patent applied for," "patent pending," or any word importing that an application for patent has been made, when no application for patent has been made, or if made, is not pending, for the purpose of deceiving the public —

Shall be fined not more than $500 for every such offense. (b) Any person may sue for the penalty, in which event one-half shall go to the person suing and the other to the use of the United States.

§ 293. Nonresident patentee; service and notice

Every patentee not residing in the United States may file in the Patent and Trademark Office a written designation stating the name and address of a person residing within the United States on whom may be served process or notice of proceedings affecting the patent or rights thereunder. If the person designated cannot be found at the address given in the last designation, or if no person has been designated, the United States District Court for the District of Columbia shall have jurisdiction and summons shall be served by publication or otherwise as the court directs. The court shall have the same jurisdiction to take any action respecting the patent or rights thereunder that it would have if the patentee were personally within the jurisdiction of the court. (Amended January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949.)

§ 294. Voluntary arbitration

(a) A contract involving a patent or any right under a patent may contain a provision requiring arbitration of any dispute relating to patent validity or infringement arising under the contract. In the absence of such a provision, the parties to an existing patent validity or infringement dispute may agree in writing to settle such dispute by arbitration. Any such provision or agreement shall be valid, irrevocable, and enforceable, except for any grounds that exist at law or in equity for revocation of a contract.

(b) Arbitration of such disputes, awards by arbitrators and confirmation of awards shall be governed by title 9, United States Code, to the extent such title is not inconsistent with this section. In any such arbitration proceeding, the defenses provided for under section 282 of this title shall be considered by the arbitrator if raised by any party to the proceeding.

(c) An award by an arbitrator shall be final and binding between the parties to the arbitration but shall have no force or effect on any other person. The parties to an arbitration may agree that in the event a patent which is the subject matter of an award is subsequently determined to be invalid or unenforceable in a judgment rendered by a court to competent jurisdiction from which no appeal can or has been taken, such award may be modified by any court of competent jurisdiction upon application by any party to the arbitration. Any such

modification shall govern the rights and obligations between such parties from the date of such modification.

(d) When an award is made by an arbitrator, the patentee, his assignee or licensee shall give notice thereof in writing to the Commissioner. There shall be a separate notice prepared for each patent involved in such proceeding. Such notice shall set forth the names and addresses of the parties, the name of the inventor, and the name of the patent owner, shall designate the number of the patent, and shall contain a copy of the award. If an award is modified by a court, the party requesting such modification shall give notice of such modification to the Commissioner. The Commissioner shall, upon receipt of either notice, enter the same in the record of the prosecution of such patent. If the required notice is not filed with the Commissioner, any party to the proceeding may provide such notice to the Commissioner.

(e) The award shall be unenforceable until the notice required by subsection (d) is received by the Commissioner. (Added August 27, 1982, Public Law 97-247, sec. 17(b)(1), 96 Stat. 322.)

CHAPTER 30 — PRIOR ART CITATIONS TO OFFICE AND REEXAMINATION OF PATENTS

SEC.

301. Citation of prior art.
302. Request for reexamination.
303. Determination of issue by Commissioner.
304. Reexamination order by Commissioner.
305. Conduct of reexamination proceedings.
306. Appeal.
307. Certificate of patentability, unpatentability, and claim cancellation.

§ 301. Citation of prior art

Any person at any time may cite to the Office in writing prior art consisting of patents or printed publications which that person believes to have a bearing on the patentability of any claim of a particular patent. If the person explains in writing the pertinency and manner of applying such prior art to at least one claim of the patent, the citation of such prior art and the explanation thereof will become a part of the official file of the patent. At the written request of the person citing the prior art, his or her identity will be excluded from

the patent file and kept confidential. (Added December 12, 1980, Public Law 96-517, sec. 1, 94 Stat. 3015.)

§ 302. Request for reexamination

Any person at any time may file a request for reexamination by the Office of any claim of a patent on the basis of any prior art cited under the provisions of section 301 of this title. The request must be in writing and must be accompanied by payment of a reexamination fee established by the Commissioner of Patents pursuant to the provisions of section 41 of this title. The request must set forth the pertinency and manner applying cited prior art to every claim for which reexamination is requested. Unless the requesting person is the owner of the patent, the Commissioner promptly will send a copy of the request to the owner of record of the patent. (Added December 12, 1980, Public Law 96-517, sec. 1, 94 Stat. 3015.)

§ 303. Determination of issue by Commissioner

(a) Within three months following the filing of a request for reexamination under the provisions of section 302 of this title, the Commissioner will determine whether a substantial new question of patentability affecting any claim of the patent concerned is raised by the request, with or without consideration of other patents or printed publications. On his own initiative, and any time, the Commissioner may determine whether a substantial new question of patentability is raised by patents and publications discovered by him or cited under the provisions of section 301 of this title.

(b) A record of the Commissioner's determination under subsection (a) of this section will be placed in the official file of the patent, and a copy promptly will be given or mailed to the owner of record of the patent and to the person requesting reexamination, if any.

(c) A determination by the Commissioner pursuant to subsection (a) of this section that no substantial new question of patentability has been raised will be final and nonappealable. Upon such a determination, the Commissioner may refund a portion of the reexamination fee required under section 302 of this title. (Added December 12, 1980, Public Law 96-517, sec. 1, 94 Stat. 3015.)

§ 304. Reexamination order by Commissioner

If, in a determination made under the provisions of subsection 303(a) of this title, the Commissioner finds that a substantial new

question of patentability affecting any claim of a patent is raised, the determination will include an order for reexamination of the patent for resolution of the question. The patent owner will be given a reasonable period, not less than two months from the date a copy of the determination is given or mailed to him, within which he may file a statement on such question, including any amendment to his patent and new claim or claims he may wish to propose, for consideration in the reexamination. If the patent owner files such a statement, he promptly will serve a copy of it on the person who has requested reexamination under the provisions of section 302 of this title. Within a period of two months from the date of service, that person may file and have considered in the reexamination a reply to any statement filed by the patent owner. That person promptly will serve on the patent owner a copy of any reply filed. (Added December 12, 1980, Public Law 96-517, sec. 1, 94 Stat. 3016.)

§ 305. Conduct of reexamination proceedings

After the times for filing the statement and reply provided for by section 304 of this title have expired, reexamination will be conducted according to the procedures established for initial examination under the provisions of sections 132 and 133 of this title. In any reexamination proceeding under this chapter, the patent owner will be permitted to propose any amendment to his patent and a new claim or claims thereto, in order to distinguish the invention as claimed from the prior art cited under the provisions of section 301 of this title, or in response to a decision adverse to the patentability of a claim of a patent. No proposed amended or new claim enlarging the scope of a claim of the patent will be permitted in a reexamination proceeding under this chapter. All reexamination proceedings under this section, including any appeal to the Board of Patent Appeals and Interferences, will be conducted with special dispatch within the Office. (Added December 12, 1980, Public Law 96-517, sec. 1, 94 Stat. 3016; Amended November 8, 1984, Public Law 98-622, Sec. 204 (c), 98 Stat. 3388.)

§ 306. Appeal

The patent owner involved in a reexamination proceeding under this chapter may appeal under the provisions of section 134 of this title, and may seek court review under the provisions of sections 141 to 145 of this title, with respect to any decision adverse to the

patentability of any original or proposed amended or new claim of the patent. (Added December 12, 1980, Public Law 96-517, sec. 1, 94 Stat. 3016.)

§ 307. Certificate of patentability, unpatentability, and claim cancellation

(a) In a reexamination proceeding under this chapter, when the time for appeal has expired or any appeal proceeding has terminated, the Commissioner will issue and publish a certificate canceling any claim of the patent finally determined to be unpatentable, confirming any claim of the patent determined to be patentable, and incorporating in the patent any proposed amended or new claim determined to be patentable.

(b) Any proposed amended or new claim determined to be patentable and incorporated into a patent following a reexamination proceeding will have the same effect as that specified in section 252 of this title for reissued patents on the right of any person who made, purchased, or used anything patented by such proposed amended or new claim, or who made substantial preparation for the same, prior to issuance of a certificate under the provisions of subsection (a) of this section. (Added December 12, 1980, Public Law 96-517, sec. 1, 94 Stat. 3016.)

PART IV — PATENT COOPERATION TREATY

CHAPTER 35 — DEFINITIONS

SEC.

351. Definitions.

§ 351. Definitions

When used in this part unless the context otherwise indicates —

(a) The term "treaty" means the Patent Cooperation Treaty done at Washington, on June 19, 1970, excluding chapter II thereof.

(b) The term "Regulations," when capitalized, means the Regulations under the treaty excluding part C thereof, done at Washington on the same date as the treaty. The term "regulations," when not capitalized, means the regulations established by the Commissioner under this title.

(c) The term "international application" means an application filed under the treaty.

(d) The term "international application originating in the United States" means an international application filed in the Patent Office when it is acting as a Receiving Office under the treaty, irrespective of whether or not the United States has been designated in that international application.

(e) The term "international application designating the United States" means an international application specifying the United States as a country in which a patent is sought, regardless where such international application is filed.

(f) The term "Receiving Office" means a national patent office or intergovernmental organization which receives and processes international applications as prescribed by the treaty and the Regulations.

(g) The term "International Searching Authority" means a national patent office or intergovernmental organization as appointed under the treaty which processes international applications as prescribed by the treaty and the Regulations.

(h) The term "International Bureau" means the international intergovernmental organization which is recognized as the coordinating body under the treaty and the Regulations.

(i) Terms and expressions not defined in this part are to be taken in the sense indicated by the treaty and the Regulations. (Added November 14, 1975, Public Law 94-131, sec. 1, 89 Stat. 685.)

CHAPTER 36 — INTERNATIONAL STAGE

SEC.
361. Receiving Office.
362. International Searching Authority.
363. International application designating the United States: Effect.
364. International stage: Procedure.
365. Right of priority; benefit of the filing date of a prior application.
366. Withdrawn international application.
367. Actions of other authorities: Review.
368. Secrecy of certain inventions; filing international applications in foreign countries.

§ 361. Receiving Office

(a) The Patent Office shall act as a Receiving Office for international applications filed by nationals or residents of the United States. In accordance with any agreement made between the United States

and another country, the Patent Office may also act as a Receiving Office for international applications filed by residents or nationals of such country who are entitled to file international applications.

(b) The Patent Office shall perform all acts connected with the discharge of duties required of a Receiving Office, including the collection of international fees and their transmittal to the International Bureau.

(c) International applications filed in the Patent Office shall be in the English language.

(d) The basic fee portion of the international fee, and the transmittal and search fees prescribed under section 376(a) of this part, shall be paid on filing of an international application or within one month after the date of such filing. Payment of designation fees may be made on filing and shall be made not later than one year from the priority date of the international application. (Added November 14, 1975, Public Law 94-131, sec. 1, 89 Stat. 686; Amended November 8, 1984, Public Law 98-622, Sec. 401 (a), 98 Stat. 3391.)

§ 362. International Searching Authority

The Patent Office may act as an International Searching Authority with respect to international applications in accordance with the terms and conditions of an agreement which may be concluded with the International Bureau. (Added November 14, 1975, Public Law 94-131, sec. 1, 89 Stat. 686.)

§ 363. International application designating the United States: Effect

An international application designating the United States shall have the effect, from its international filing date under article 11 of the treaty, of a national application for patent regularly filed in the Patent Office except as otherwise provided in section 102(e) of this title. (Added November 14, 1975, Public Law 94-131, sec. 1, 89 Stat. 686.)

§ 364. International stage: Procedure

(a) International applications shall be processed by the Patent Office when acting as a Receiving Office or International Searching Authority, or both, in accordance with the applicable provisions of the treaty, the Regulations, and this title.

(b) An applicant's failure to act within prescribed time limits in connection with requirements pertaining to a pending international application may be excused upon a showing satisfactory to the Commissioner of unavoidable delay, to the extent not precluded by the treaty and the Regulations, and provided the conditions imposed by the treaty and the Regulations regarding the excuse of such failure to act are complied with. (Added November 14, 1975, Public Law 94-131, sec. 1, 89 Stat. 686.)

§ 365. Right of priority; benefit of the filing date of a prior application

(a) In accordance with the conditions and requirements of section 119 of this title, a national application shall be entitled to the right of priority based on a prior filed international application which designated at least one country other than the United States.

(b) In accordance with the conditions and requirement of the first paragraph of section 119 of this title and the treaty and the Regulations, an international application designating the United States shall be entitled to the right of priority based on a prior foreign application, or a prior international application designating at least one country other than the United States.

(c) In accordance with the conditions and requirements of section 120 of this title, an international application designating the United States shall be entitled to the benefit of the filing date of a prior national application or a prior international application designating the United States, and a national application shall be entitled to the benefit of the filing date of a prior international application designating the United States. If any claim for the benefit of an earlier filing date is based on a prior international application which designated but did not originate in the United States, the Commissioner may require the filing in the Patent Office of a certified copy of such application together with a translation thereof into the English language, if it was filed in another language. (Added November 14, 1975, Public Law 94-131, sec. 1, 89 Stat. 686.)

§ 366. Withdrawn international application

Subject to section 367 of this part, if an international application designating the United States is withdrawn or considered withdrawn, either generally or as to the United States, under the conditions of the treaty and the Regulations, before the applicant has complied with the

applicable requirements prescribed by section 371(c) of this part, the designation of the United States shall have no effect after the date of withdrawal and shall be considered as not having been made, unless a claim for the benefit of a prior filing date under section 365(c) of this part was made in a national application, or an international application designating the United States, filed before the date of such withdrawal. However, such withdrawn international application may serve as the basis for a claim of priority under section 365(a) and (b) of this part, if it designated a country other than the United States. (Added November 14, 1975, Public Law 94-131, sec. 1, 89 Stat. 687; Amended November 8, 1984, Public Law 98-622, sec. 401(b), 98 Stat. 3391.)

§ 367. Actions of other authorities: Review

(a) Where a Receiving Office other than the Patent Office has refused to accord an international filing date to an international application designating the United States or where it has held such application to be withdrawn either generally or as to the United States, the applicant may request review of the matter by the Commissioner, on compliance with the requirements of and within the time limits specified by the treaty and the Regulations. Such review may result in a determination that such application be considered as pending in the national stage.

(b) The review under subsection (a) of this section, subject to the same requirements and conditions, may also be requested in those instances where an international application designating the United States is considered withdrawn due to a finding by the International Bureau under article 12(3) of the treaty. (Added November 14, 1975, Public Law 94-131, sec. 1, 89 Stat. 687.)

§ 368. Secrecy of certain inventions; filing international applications in foreign countries

(a) International applications filed in the Patent Office shall be subject to the provisions of chapter 17 of this title.

(b) In accordance with article 27(8) of the treaty, the filing of an international application in a country other than the United States on the invention made in this country shall be considered to constitute the filing of an application in a foreign country within the meaning of chapter 17 of this title, whether or not the United States is designated in that international application.

(c) If a license to file in a foreign country is refused or if an international application is ordered to be kept secret and a permit refused, the Patent Office when acting as a Receiving Office or International Searching Authority, or both, may not disclose the contents of such application to anyone not authorized to receive such disclosure. (Added November 14, 1975, Public Law 94-131, sec. 1, 89 Stat. 687.)

CHAPTER 37 — NATIONAL STAGE

SEC.

371. National stage: Commencement.
372. National stage: Requirements and procedure.
373. Improper applicant.
374. Publication of international application: Effect.
375. Patent issued on international application: Effect.
376. Fees.

§ 371. National stage: Commencement

(a) Receipt from the International Bureau of copies of international applications with amendments to the claims, if any, and international search reports may be required in the case of all international applications designating the United States.

(b) Subject to subsection (f) of this section, the national stage shall commence with the expiration of the applicable time limit under article 22(1) or (2) of the treaty.

(c) The applicant shall file in the Patent Office —

(1) the national fee prescribed under section 376(a)(4) of this part;

(2) a copy of the international application, unless not required under subsection (a) of this section or already communicated by the International Bureau, and a translation into the English language of the international application, if it was filed in another language;

(3) amendments, if any, to the claims in the international application, made under article 19 of the treaty, unless such amendments have been communicated to the Patent Office by the International Bureau, and a translation into the English language if such amendments were made in another language;

(4) an oath or declaration of the inventor (or other person authorized under chapter 11 of this title) complying with the requirements of section 115 of this title and with regulations prescribed for oaths or declarations of applicants.

(d) The requirements with respect to the national fee referred to in subsection (c)(1), the translation referred to in subsection (c)(2), and the oath or declaration referred to in subsection (c)(4) of this section shall be complied with by the date of the commencement of the national stage or by such later time as may be fixed by the Commissioner. The copy of the international application referred to in subsection (c)(2) shall be submitted by the date of the commencement of the national stage. Failure to comply with these requirements shall be regarded as abandonment of the application by the parties thereof, unless it be shown to the satisfaction of the Commissioner that such failure to comply was unavoidable. The payment of a surcharge may be required as a condition of accepting the national fee referred to in subsection (c)(1) or the oath or declaration referred to in subsection (c)(4) of this section if these requirements are not met by the date of the commencement of the national stage. The requirements of subsection (c)(3) of this section shall be complied with by the date of the commencement of the natioal stage, and failure to do so shall be regarded as a cancellation of the amendments to the claims in the international application made under article 19 of the treaty.

(e) After an international application has entered the national stage, no patent may be granted or refused thereon before the expiration of the applicable time limit under article 28 of the treaty, except with the express consent of the applicant. The applicant may present amendments to the specification, claims, and drawings of the application after the national stage has commenced.

(f) At the express request of the applicant, the national stage of processing may be commenced at any time at which the application is in order for such purpose and the applicable requirements of subsection (c) of this section have been complied with. (Added November 14, 1975, Public Law 94-131, sec. 1, 89 Stat. 688; Amended November 8, 1984, Public Law 98-622, sec. 402(b), 98 Stat. 3391.)

§ 372. National stage: Requirements and procedure

(a) All questions of substance and, within the scope of the requirements of the treaty and Regulations, procedure in an international application designating the United States shall be determined as in the case of national applications regularly filed in the Patent Office.

(b) In case of international applications designating but not originating in, the United States —

(1) the Commissioner may cause to be reexamined questions relating to form and contents of the application in accordance with the requirements of the treaty and the Regulations;

(2) the Commissioner may cause the question of unity of invention to be reexamined under section 121 of this title, within the scope of the requirements of the treaty and the Regulations; and

(3) the Commissioner may require a verification of the translation of the international application or any other document pertaining to the application if the application or other document was filed in a language other than English. (Added November 14, 1975, Public Law 94-131, sec.1, 89 Stat. 689; Amended November 8, 1984, Public Law 98-622, sec. 402(e), 98 Stat. 3392.)

§ 373. Improper applicant

An international application designating the United States, shall not be accepted by the Patent Office for the national stage if it was filed by anyone not qualified under chapter 11 of this title to be an applicant for the purpose of filing a national application in the United States. Such international applications shall not serve as the basis for the benefit of an earlier filing date under section 120 of this title in a subsequently filed application, but may serve as the basis for a claim of the right of priority under section 119 of this title, if the United States was not the sole country designated in such international application. (Added November 14, 1975, Public Law 94-131, sec. 1, 89 Stat. 689.)

§ 374. Publication of international application: Effect

The publication under the treaty of an international application shall confer no rights and shall have no effect under this title other than that of a printed publication. (Added November 14, 1975, Public Law 94-131, sec. 1, 89 Stat. 689.)

§ 375. Patent issued on international application: Effect

(a) A patent may be issued by the Commissioner based on an international application designating the United States, in accordance with the provisions of this title. Subject to section 102(e) of this title, such patent shall have the force and effect of a patent issued on a national application filed under the provisions of chapter 11 of this title.

(b) Where due to an incorrect translation the scope of a patent granted on an international application designating the United States, which was not originally filed in the English language, exceeds the scope of the international application in its original language, a court of competent jurisdiction may retroactively limit the scope of the patent, by declaring it unenforceable to the extent that it exceeds the scope of the international application in its original language. (Added November 14, 1975, Public Law 94-131, sec. 1, 89 Stat. 689.)

§ 376. Fees

(a) The required payment of the international fee, which amount is specified in the Regulations, shall be paid in United States currency. The patent Office may also charge the following fees:

(1) A transmittal fee (see section 361(d));

(2) A search fee (see section 361(d));

(3) A supplemental search fee (to be paid when required);

(4) A national fee (see section 371(c));

(5) Such other fees as established by the Commissioner.

(b) The amounts of fees specified in subsection (a) of this section, except the international fee, shall be prescribed by the Commissioner. He may refund any sum paid by mistake or in excess of the fees so specified, or if required under the treaty and the Regulations. The Commissioner may also refund any part of the search fee, where he determines such refund to be warranted. (Added November 14, 1975, Public Law 94-131, sec. 1, 89 Stat. 690; Amended November 8, 1984, Public Law 98-622, sec. 402(g), 98 Stat. 3392.)

UNITED STATES CODE

TITLE 15, CHAPTER 22 — TRADEMARKS

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1070. Appeals to Trademark Trial and Appeal Board from decisions of examiners.
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1072. Registration as constructive notice of claim of ownership.

*§ 1051 Registration; application; payment of fees; designation of resident for service of process and notice [Section 1]

The owner of a trademark used in commerce may register his trademark under this chapter on the principal register established:

(a) By filing in the Patent and Trademark Office —

(1) a written application, in such form as may be prescribed by the Commissioner, verified by the applicant, or by a member of the

*[*Ed. Note:* Following each official section cite and caption, in brackets, is a reference to the unofficial, but often referred to, section citation. Thus, for example, 15 U.S.C. 1125(a) is also section 43(a) of the Trademark (Lanham) Act of 1946, as amended.]

firm or an officer of the corporation or association applying specifying applicant's domicile and citizenship, the date of applicant's first use of the mark, the date of applicant's first use of the mark in commerce, the goods in connection with which the mark is used and the mode or manner in which the mark is used in connection with such goods, and including a statement to the effect that the person making the verification believes himself, or the firm, corporation, or association in whose behalf he makes the verification, to be the owner of the mark sought to be registered, that the mark is in use in commerce, and that no other person, firm, corporation, or association, to the best of his knowledge and belief, has the right to use such mark in commerce either in the identical form thereof or in such near resemblance thereto as to be likely, when applied to the goods of such other person, to cause confusion, or to cause mistake, or to deceive: *Provided,* That in the case of every application claiming concurrent use the applicant shall state exceptions to his claim of exclusive use, in which he shall specify, to the extent of his knowledge, any concurrent use by others, the goods in connection with which and the areas in which each concurrent use exists, the periods of each use, and the goods and area for which the applicant desires registration;

(2) a drawing of the mark; and

(3) such number of specimens or facsimiles of the mark as actually used as may be required by the Commissioner.

(b) By paying into the Patent and Trademark Office the filing fee.

(c) By complying with such rules or regulations, not inconsistent with law, as may be prescribed by the Commissioner.

(d) If the applicant is not domiciled in the United States he shall designate by a written document filed in the Patent and Trademark Office the name and address or some person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with him or mailing to him a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, such notice or process may be served upon the Commissioner. (July 5, 1946, c. 540, Title I, sec. 1, 60 Stat. 427; October 9, 1962, Public Law 87-772, sec. 1, 76 Stat. 769; January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949.)

§ 1052. Trademarks registrable on principal register; concurrent registration [Section 2]

No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it —

(a) Consists of or comprises immoral, deceptive, or scandalous matter; or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute.

(b) Consists of or comprises the flag or coat of arms or other insignia of the United States, or of any State or municipality, or of any foreign nation, or any simulation thereof.

(c) Consists of or comprises a name, portrait, or signature identifying a particular living individual except by his written consent, or the name, signature, or portrait of a deceased President of the United States during the life of his widow, if any, except by the written consent of the widow.

(d) Consists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when applied to the goods of the applicant, to cause confusion, or to cause mistake, or to deceive: *Provided,* That when the Commissioner determines that confusion, mistake, or deception is not likely to result from the continued use by more than one person of the same or similar marks under conditions and limitations as to the mode or place of use of the marks or the goods in connection with which such marks are used, concurrent registrations may be issued to such persons when they have become entitled to use such marks as a result of their concurrent lawful use in commerce prior to (i) the earliest of the filing dates of the applications pending or of any registration issued under this chapter; or (ii) July 5, 1947, in the case of registrations previously issued under the Act of March 3, 1881, or February 20, 1905, and continuing in full force and effect on that date; or (iii) July 5, 1947, in the case of applications filed under the Act of February 20, 1905, and registered after July 5, 1947. Concurrent registrations may also be issued by the Commissioner when a court of competent jurisdiction has finally determined that more than one person is entitled to use the same or similar marks in commerce. In issuing concurrent registrations, the Commissioner shall

prescribe conditions and limitations as to the mode or place of use of the mark or the goods in connection with which such mark is registered to the respective persons.

(e) Consists of a mark which, (1) when applied to the goods of the applicant is merely descriptive or deceptively misdescriptive of them, or (2) when applied to the goods of the applicant is primarily geographically descriptive or deceptively misdescriptive of them, except as indications of regional origin may be registrable under section 1054 of this title, or (3) is primarily merely a surname.

(f) Except as expressly excluded in paragraphs (a)-(d) of this section, nothing in this chapter shall prevent the registration of a mark used by the applicant which has become distinctive of the applicant's goods in commerce. The Commissioner may accept as prima facie evidence that the mark has become distinctive, as applied to the applicant's goods in commerce, proof of substantially exclusive and continuous use thereof as a mark by the applicant in commerce for the five years next preceding the date of the filing of the application for its registration. (July 5, 1946, c. 540, Title I, sec. 2, 60 Stat. 428; October 9, 1962, Public Law 87-772, sec. 2, 76 Stat. 769; January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949.)

§ 1053. Service marks registrable [Section 3]

Subject to the provisions relating to the registration of trademarks, so far as they are applicable, service marks used in commerce shall be registrable, in the same manner and with the same effect as are trademarks, and when registered they shall be entitled to the protection provided in this chapter in the case of trademarks, except when used so as to represent falsely that the owner thereof makes or sells the goods on which such mark is used. The Commissioner may establish a separate register for such service marks. Applications and procedure under this section shall conform as nearly as practicable to those prescribed for the registration of trademarks. (July 5, 1946, c. 540, Title I, sec. 3, 60 Stat. 429.)

§ 1054. Collective marks and certification marks registrable [Section 4]

Subject to the provisions relating to the registration of trademarks, so far as they are applicable, collective and certification marks,

including indications of regional origin used in commerce, shall be registrable under this chapter, in the same manner and with the same effect as are trademarks, by persons, and nations, States, municipalities, and the like, exercising legitimate control over the use of the marks sought to be registered, even though not possessing an industrial or commercial establishment, and when registered they shall be entitled to the protection provided in this chapter in the case of trademarks, except when used so as to represent falsely that the owner or a user thereof makes or sells the goods or performs the services on or in connection with which such mark is used. The Commissioner may establish a separate register for such collective marks and certification marks. Applications and procedure under this section shall conform as nearly as practicable to those prescribed for the registration of trademarks. (July 5, 1946, c. 540, Title I, sec. 4, 60 Stat. 429.)

§ 1055. Use by related companies affecting validity and registration [Section 5]

Where a registered mark or a mark sought to be registered is or may be used legitimately by related companies, such use shall inure to the benefit of the registrant or applicant for registration, and such use shall not affect the validity of such mark or of its registration, provided such mark is not used in such manner as to deceive the public. (July 5, 1946, c. 540, Title I, sec. 5, 60 Stat. 429.)

§ 1056. Disclaimer of unregistrable matter [Section 6]

(a) The Commissioner may require the applicant to disclaim an unregistrable component of a mark otherwise registrable. An applicant may voluntarily disclaim a component of a mark sought to be registered.

(b) No disclaimer, including those made under paragraph (d) of section 1057 of this title shall prejudice or affect the applicant's or registrant's rights then existing or thereafter arising in the disclaimed matter, or his right of registration on another application if the disclaimed matter be or shall have become distinctive of his goods or services. (July 5, 1946, c. 540, Title I, sec. 6, 60 Stat. 429; October 9, 1962, Public Law 87-772, sec. 3, 76 Stat. 769.)

Issuance and form

(a) Certificates of registration of marks registered upon the principal register shall be issued in the name of the United States of America, under the seal of the Patent and Trademark Office, and shall be signed by the Commissioner or have his signature placed thereon, and a record thereof shall be kept in the Patent and Trademark Office. The registration shall reproduce the mark, and state that the mark is registered on the principal register under this chapter, the date of the first use of the mark, the date of the first use of the mark in commerce, the particular goods or services for which it is registered, the number and date of the registration, the term thereof, the date on which the application for registration was received in the Patent and Trademark Office, and any conditions and limitations that may be imposed in the registration.

Certificate as prima facie evidence

(b) A certificate of registration of a mark upon the principal register provided by this chapter shall be prima facie evidence of the validity of the registration, registrant's ownership of the mark, and of registrant's exclusive right to use the mark in commerce in connection with the goods or services specified in the certificate, subject to any conditions and limitations stated therein.

Issuance to assignee

(c) A certificate of registration of a mark may be issued to the assignee of the applicant, but the assignment must first be recorded in the Patent and Trademark Office. In case of change of ownership the Commissioner shall, at the request of the owner and upon a proper showing and the payment of the fee provided in this chapter, issue to such assignee a new certificate of registration of the said mark in the name of such assignee, and for the unexpired part of the original period.

Surrender, cancellation, or amendment by registrant

(d) Upon application of the registrant the Commissioner may permit any registration to be surrendered for cancellation, and upon cancellation appropriate entry shall be made in the records of the Patent and Trademark Office. Upon application of the registrant and

payment of the prescribed fee, the Commissioner for good cause may permit any registration to be amended or to be disclaimed in part: *Provided,* That the amendment or disclaimer does not alter materially the character of the mark. Appropriate entry shall be made in the records of the Patent and Trademark Office and upon the certificate of registration or, if said certificate is lost or destroyed, upon a certified copy thereof.

Copies of Patent and Trademark Office records as evidence

(e) Copies of any records, books, papers, or drawings belonging to the Patent and Trademark Office relating to marks, and copies of registrations, when authenticated by the seal of the Patent and Trademark Office and certified by the Commissioner, or in his name by an employee of the Office duly designated by the Commissioner, shall be evidence in all cases wherein the originals would be evidence; and any person making application therefor and paying the fee required by law shall have such copies.

Correction of Patent and Trademark Office mistake

(f) Whenever a material mistake in a registration, incurred through the fault of the Patent and Trademark Office, is clearly disclosed by the records of the Office a certificate stating the fact and nature of such mistake, shall be issued without charge and recorded and a printed copy thereof shall be attached to each printed copy of the registration and such corrected registration shall thereafter have the same effect as if the same had been originally issued in such corrected form, or in the discretion of the Commissioner a new certificate of registration may be issued without charge. All certificates of correction heretofore issued in accordance with the rules of the Patent and Trademark Office and the registrations to which they are attached shall have the same force and effect as if such certificates and their issue had been specifically authorized by statute.

Correction of applicant's mistake

(g) Whenever a mistake has been made in a registration and a showing has been made that such mistake occurred in good faith through the fault of the applicant, the Commissioner is authorized to issue a certificate of correction or, in his discretion, a new certificate upon the payment of the required fee: *Provided,* That the correction does not involve such changes in the registration as to require republication of the mark. (July 5, 1946, c. 540, Title I, sec. 7, 60 Stat.

430; August 17, 1950, c. 733, 64 Stat. 459; October 9, 1962, Public Law 87-772, sec. 4, 76 Stat. 769.)

§ 1058. Duration of registration; cancellation; affidavit of continued use; notice of Commissioner's action [Section 8]

(a) Each certificate of registration shall remain in force for twenty years: *Provided,* That the registration of any mark under the provisions of this chapter shall be canceled by the Commissioner at the end of six years following its date, unless within one year next preceding the expiration of such six years the registrant shall file in the Patent and Trademark Office an affidavit showing that said mark is in use in commerce or showing that its nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark. Special notice of the requirement for such affidavit shall be attached to each certificate of registration.

(b) Any registration published under the provisions of subsection (c) of section 1062 of this title shall be canceled by the Commissioner at the end of six years after the date of such publication unless within one year next preceding the expiration of such six years the registrant shall file in the Patent and Trademark Office an affidavit showing that said mark is in use in commerce or showing that its nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark.

(c) The Commissioner shall notify any registrant who files either of the above-prescribed affidavits of his acceptance or refusal thereof and, if a refusal, the reasons therefor. (As amended January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949; August 27, 1982, Public Law 97-247, sec. 8, 96 Stat. 320.)

§ 1059. Renewal of registration [Section 9]

(a) Each registration may be renewed for periods of twenty years from the end of the expiring period upon payment of the prescribed fee and the filing of a verified application therefor, setting forth those goods or services recited in the registration on or in connection with which the mark is still in use in commerce and having attached thereto a specimen or facsimile showing current use of the mark, or showing that any nonuse is due to special circumstances which excuse such nonuse and it is not due to any intention to abandon the mark. Such application may be made at any time within six months before

the expiration of the period for which the registration was issued or renewed, or it may be made within three months after such expiration on payment of the additional fee herein prescribed.

(b) If the Commissioner refuses to renew the registration, he shall notify the registrant of his refusal and the reasons therefor.

(c) An applicant for renewal not domiciled in the United States shall be subject to and comply with the provisions of section 1051(d) of this title. (July 5, 1946, c. 540, Title I, sec. 9, 60 Stat. 431; October 9, 1962, Public Law 87-772, sec. 5, 76 Stat. 770.)

§ 1060. Assignment of mark; execution; recording; purchaser without notice [Section 10]

A registered mark or a mark for which application to register has been filed shall be assignable with the goodwill of the business in which the mark is used, or with that part of the goodwill of the business connected with the use of and symbolized by the mark, and in any such assignment it shall not be necessary to include the goodwill of the business connected with the use of and symbolized by any other mark used in the business or by the name or style under which the business is conducted. Assignments shall be by instruments in writing duly executed. Acknowledgment shall be prima facie evidence of the execution of an assignment and when recorded in the Patent and Trademark Office the record shall be prima facie evidence of execution. An assignment shall be void as against any subsequent purchaser for a valuable consideration without notice, unless it is recorded in the Patent and Trademark Office within three months after the date thereof or prior to such subsequent purchase. A separate record of assignments submitted for recording hereunder shall be maintained in the Patent and Trademark Office.

An assignee not domiciled in the United States shall be subject to and comply with the provisions of section 1051(d) of this title. (As amended January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949.)

§ 1061. Execution of acknowledgments and verifications [Section 11]

Acknowledgments and verifications required under this chapter may be made before any person within the United States authorized by law to administer oaths, or, when made in a foreign country, before any diplomatic or consular officer of the United States or before any official authorized to administer oaths in the foreign

country concerned whose authority is proved by a certificate of a diplomatic or consular officer of the United States, or apostille of an official designated by a foreign country which, by treaty or convention, accords like effect to apostilles of designated officials in the United States, and shall be valid if they comply with the laws of the state or country where made. (July 5, 1946, c. 540, Title I, sec. 11, 60 Stat. 432. Amended August 27, 1982, Public Law 97-247, sec. 14(c), 96 Stat. 321.)

§ 1062. Publication; proceedings on refusal of registration; republication of marks registered under prior acts [Section 12]

(a) Upon the filing of an application for registration and payment of the fee provided in this chapter, the Commissioner shall refer the application to the examiner in charge of the registration of marks, who shall cause an examination to be made and, if on such examination it shall appear that the applicant is entitled to registration, the Commissioner shall cause the mark to be published in the Official Gazette of the Patent and Trademark Office: *Provided,* That in the case of an applicant claiming concurrent use, or in the case of an application to be placed in an interference as provided for in section 1066 of this title, the mark, if otherwise registrable, may be published subject to the determination of the rights of the parties to such proceedings.

(b) If the applicant is found not entitled to registration, the examiner shall advise the applicant thereof and of the reasons therefor. The applicant shall have a period of six months in which to reply or amend his application, which shall then be re-examined. This procedure may be repeated until (1) the examiner finally refuses registration of the mark or (2) the applicant fails for a period of six months to reply or amend or appeal, whereupon the application shall be deemed to have been abandoned, unless it can be shown to the satisfaction of the Commissioner that the delay in responding was unavoidable, whereupon such time may be extended.

(c) A registrant of a mark registered under the provisions of the Act of March 3, 1881, or the Act of February 20, 1905, may, at any time prior to the expiration of the registration thereof, upon the payment of the prescribed fee file with the Commissioner an affidavit setting forth those goods stated in the registration on which said mark is in use in commerce and that the registrant claims the benefits of this chapter for said mark. The Commissioner shall publish notice thereof

with a reproduction of said mark in the Official Gazette, and notify the registrant of such publication and of the requirement for the affidavit of use or nonuse as provided for in subsection (b) of section 1058 of this title. Marks published under this subsection shall not be subject to the provisions of section 1063 of this title. (July 5, 1946, c. 540, Title I, sec. 12, 60 Stat. 432; October 9, 1962, Public Law 87-772, sec. 7, 76 Stat. 770.)

§ 1063. Opposition to registration [Section 13]

Any person who believes that he would be damaged by the registration of a mark upon the principal register may, upon payment of the required fee, file an opposition in the Patent and Trademark Office, stating the grounds therefore, withing thirty days after the publication under subsection (a) of section 1062 of this title of the mark sought to be registered. Upon written request prior to the expiration of the thirty-day period, the time for filing opposition shall be extended for an additional thirty days, and further extensions of time for filing opposition may be granted by the Commissioner for good cause when requested prior to the expiration of an extension. The Commissioner shall notify the applicant of each extension of the time for filing opposition. An opposition may be amended under such conditions as may be prescribed by the Commissioner. (As amended January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949; January 2, 1975, Public Law 93-600, sec. 1, 88 Stat. 1955; August 27, 1982, Public Law 97-247, sec. 9(a), 96 Stat. 320.)

§ 1064. Cancellation of registration [Section 14]

A petition to cancel a registration of a mark, stating the grounds relied upon, may, upon payment of the prescribed fee, be filed by any person who believes that he is or will be damaged by the registration of a mark on the principal register established by this chapter, or under the Act of March 3, 1881, or the Act of February 20, 1905 —

(a) within five years from the date of the registration of the mark under this chapter; or

(b) within five years from the date of publication under section 1062(c) of this title of a mark registered under the Act of March 3, 1881, or the Act of February 20, 1905; or

(c) at any time if the registered mark becomes the common descriptive name of an article or substance, or has been abandoned, or its registration was obtained fraudulently or contrary to the

provisions of section 1054 of this title or of subsections (a), (b), or (c) of section 1052 of this title for a registration hereunder, or contrary to similar prohibitory provisions of said prior Acts for a registration thereunder, or if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services in connection with which the mark is used. A registered mark shall not be deemed to be the common descriptive name of goods or services solely because such mark is also used as a name of or to identify a unique product or service. The primary significance of the registered mark to the relevant public rather than purchaser motivation shall be the test for determining whether the registered mark has become the common descriptive name of goods or services in connection with which it has been used; or

(d) at any time if the mark is registered under the Act of March 3, 1881, or the Act of February 20, 1905, and has not been published under the provisions of subsection (c) of section 1062 of this title; or

(e) at any time in the case of a certification mark on the ground that the registrant (1) does not control, or is not able legitimately to exercise control over, the use of such mark, or (2) engages in the production or marketing of any goods or services to which the certification mark is applied, or (3) permits the use of the certification mark for purposes other than to certify, or (4) discriminately refuses to certify or to continue to certify the goods or services of any person who maintains the standards or conditions which such mark certifies: *Provided,* That the Federal Trade Commission may apply to cancel on the grounds specified in subsections (c) and (e) of this section any mark registered on the principal register established by this chapter, and the prescribed fee shall not be required. (July 5, 1946, c. 540, Title I, sec. 14, 60 Stat. 433; October 9, 1962, Public Law 87-772, sec. 9, 76 Stat. 771; August 27, 1982, Public Law 97-247, sec. 9(b), 96 Stat. 320; November 8, 1984; Public Law 98-620; sec. 102, 98 Stat. 3335.)

§ 1065. Incontestability of right to use mark under certain conditions [Section 15]

Except on a ground for which application to cancel may be filed at any time under subsections (c) and (e) of section 1064 of this title, and except to the extent, if any, to which the use of a mark registered on

the principal register infringes a valid right acquired under the law of any State or Territory by use of a mark or trade name continuing from a date prior to the date of registration under this chapter of such registered mark, the right of the registrant to use such registered mark in commerce for the goods or services on or in connection with which such registered mark has been in continuous use for five consecutive years subsequent to the date of such registration and is still in use in commerce, shall be incontestable: *Provided,* That —

(1) there has been no final decision adverse to registrant's claim of ownership of such mark for such goods or services, or to registrant's right to register the same or to keep the same on the register; and

(2) there is no proceeding involving said rights pending in the Patent and Trademark Office or in a court and not finally disposed of; and

(3) an affidavit is filed with the Commissioner within one year after the expiration of any such five-year period setting forth those goods or services stated in the registration on or in connection with which such mark has been in continuous use for such five consecutive years and is still in use in commerce, and the other matters specified in subsections (1) and (2) of this section; and

(4) no incontestable right shall be acquired in a mark which is the common descriptive name of any article or substance, patented or otherwise.

Subject to the conditions above specified in this section, the incontestable right with reference to a mark registered under this chapter shall apply to a mark registered under the Act of March 3, 1881, or the Act of February 20, 1905, upon the filing of the required affidavit with the Commissioner within one year after the expiration of any period of five consecutive years after the date of publication of a mark under the provisions of subsection (c) of section 1062 of this title.

The Commissioner shall notify any registrant who files the above-prescribed affidavit of the filing thereof. (As amended January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949; August 27, 1982, Public Law 97-247, sec. 10, 96 Stat. 320.)

§ 1066. Interference; declaration by Commissioner [Section 16]

Upon petition showing extraordinary circumstances, the Commissioner may declare that an interference exists when application is made for the registration of a mark which so resembles a mark

previously registered by another, or for the registration of which another has previously made application, as to be likely when applied to the goods or when used in connection with the services of the applicant to cause confusion or mistake or to deceive. No interference shall be declared between an application and the registration of a mark the right to the use of which has become incontestable. (July 5, 1946, c. 540, Title I, sec. 16, 60 Stat. 434; October 9, 1962, Public Law 87-772, sec. 11, 76 Stat. 771; August 27, 1982, Public Law 97-247, sec. 11, 96 Stat. 321.)

§ 1067. Interference, opposition, and proceedings for concurrent use registration or for cancellation; notice; Trademark Trial and Appeal Board [Section 17]

In every case of interference, opposition to registration, application to register as a lawful concurrent user, or application to cancel the registration of a mark, the Commissioner shall give notice to all parties and shall direct a Trademark Trial and Appeal Board to determine and decide the respective rights of registration.

The Trademark Trial and Appeal Board shall include the Commissioner, the Deputy Commissioner, the Assistant Commissioners, and members appointed by the Commissioner. Employees of the Patent and Trademark Office and other persons, all of whom shall be competent in trademark law, shall be eligible for appointment as members. Each case shall be heard by at least three members of the Board, the members hearing such case to be designated by the Commissioner. (As amended January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949; October 15, 1980, Public Law 96-455, sec. 1, 94 Stat. 2024.)

§ 1068. Same; action of Commissioner [Section 18]

In such proceedings the Commissioner may refuse to register the opposed mark, may cancel or restrict the registration of a registered mark, or may refuse to register any or all of several interfering marks, or may register the mark or marks for the person or persons entitled thereto, as the rights of the parties under this chapter may be established in the proceedings: *Provided,* That in the case of the registration of any mark based on concurrent use, the Commissioner shall determine and fix the conditions and limitations provided for in subsection (d) of section 1052 of this title. (July 5, 1946, c. 540, Title I, sec. 18, 60 Stat. 435.)

§ 1069. Application of equitable principles in inter partes proceedings [Section 19]

In all inter partes proceedings equitable principles of laches, estoppel, and acquiescence, where applicable may be considered and applied. The provisions of this section shall also govern proceedings heretofore begun in the Patent and Trademark Office and not finally determined. (As amended January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949.)

§ 1070. Appeals to Trademark Trial and Appeal Board from decisions of examiners [Section 20]

An appeal may be taken to the Trademark Trial and Appeal Board from any final decision of the examiner in charge of the registration of marks upon the payment of the prescribed fee. (July 5, 1946, c. 540, Title I, sec. 20, 60 Stat. 435; August 8, 1958, Public Law 85-609, sec. 1(b), 72 Stat. 540.)

§ 1071. Appeal to courts [Section 21]

(a)(1) An applicant for registration of a mark, party to an interference proceeding, party to an opposition proceeding, party to an application to register as a lawful concurrent user, party to a cancellation proceeding, a registrant who has filed an affidavit as provided in section 1058 of this title, or an applicant for renewal, who is dissatisfied with the decision of the Commissioner or Trademark Trial and Appeal Board, may appeal to the United States Court of Appeals for the Federal Circuit thereby waiving his right to proceed under subsection (b) of this section: *Provided*, That such appeal shall be dismissed if any adverse party to the proceeding, other than the Commissioner, shall, within twenty days after the appellant has filed notice of appeal according to subsection (a)(2) of this section, files notice with the Commissioner that he elects to have all further proceedings conducted as provided in subsection (b) of this section. Thereupon the appellant shall have thirty days thereafter within which to file a civil action under said subsection (b) of this section, in default of which the decision appealed from shall govern the further proceedings in the case.

(2) When an appeal is taken to the United States Court of Appeals for the Federal Circuit, the appellant shall file in the Patent and Trademark Office a written notice of appeal directed to the

Commissioner, within such time after the date of the decision from which the appeal is taken as the Commissioner prescribes, but in no case less than 60 days after that date. (Amended November 8, 1984, Public Law 98–620, sec. 414(b), 98 Stat. 3363.)

(3) The Commissioner shall transmit to the United States Court of Appeals for the Federal Circuit a certified list of the documents comprising the record in the Patent and Trademark Office. The court may request that the Commissioner forward the original or certified copies of such documents during pendency of the appeal. In an ex parte case, the Commissioner shall submit to that court a brief explaining the grounds for the decision of the Patent and Trademark Office, addressing all the issues involved in the appeal. The court shall, before hearing an appeal, give notice of the time and place of the hearing to the Commissioner and the parties in the appeal. (Amended November 8, 1984, Public Law 98–620, sec. 414(b), 98 Stat. 3363.)

(4) The United States Court of Appeals for the Federal Circuit shall review the decision from which the appeal is taken on the record before the Patent and Trademark Office. Upon its determination the court shall issue its mandate and opinion to the Commisioner, which shall be entered of record in the Patent and Trademark Office and shall govern the further proceedings in the case. (Amended November 8, 1984, Public Law 98–620, sec. 414(b), 98 Stat. 3363).

(b)(1) Whenever a person authorized by subsection (a) of this section to appeal to the United States Court of Appeals for the Federal Circuit is dissatisfied with the decision of the Commissioner or Trademark Trial and Appeal Board, said person may, unless appeal has been taken to said Court of Appeals for the Federal Circuit, have remedy by a civil action if commenced within such time after such decision, not less than sixty days, as the Commissioner appoints or as provided in subsection (a) of this section. The court may adjudge that an applicant is entitled to a registration upon the application involved, that a registration involved should be canceled, or such other matter as the issues in the proceeding require, as the facts in the case may appear. Such adjudication shall authorize the Commissioner to take any necessary action, upon compliance with the requirements of law.

(2) The Commissioner shall not be made a party to an inter partes proceeding under this subsection, but he shall be notified of

the filing of the complaint by the clerk of the court in which it is filed and shall have the right to intervene in the action.

(3) In all cases where there is no adverse party, a copy of the complaint shall be served on the Commissioner; and all the expenses of the proceedings shall be paid by the party bringing them, whether the final decision is in his favor or not. In suits brought hereunder, the record in the Patent and Trademark Office shall be admitted on motion of any party, upon such terms and conditions as to costs, expenses, and the further cross-examination of the witnesses as the court imposes, without prejudice to the right of any party to take further testimony. The testimony and exhibits of the record in the Patent and Trademark Office, when admitted, shall have the same effect as if originally taken and produced in the suit.

(4) Where there is an adverse party, such suit may be instituted against the party in interest as shown by the records of the Patent and Trademark Office at the time of the decision complained of, but any party in interest may become a party to the action. If there be adverse parties residing in a plurality of districts not embraced within the same State, or an adverse party residing in a foreign country, the United States District Court for the District of Columbia shall have jurisdiction and may issue summons against the adverse parties directed to the marshal of any district in which any adverse party resides. Summons against adverse parties residing in foreign countries may be served by publication or otherwise as the court directs. (As amended January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949; January 2, 1975, Public Law 93-600, sec. 2, 88 Stat. 1955; April 2, 1982, Public Law 97-164, sec. 162, 96 Stat. 49.)

§ 1072. Registration as constructive notice of claim of ownership [Section 22]

Registration of a mark on the principal register provided by this chapter or under the Act of March 3, 1881, or the Act of February 20, 1905, shall be constructive notice of the registrant's claim of ownership thereof. (July 5, 1946, c. 540, Title I, sec. 22, 60 Stat. 435.)

SUBCHAPTER II — THE SUPPLEMENTAL REGISTER

SEC.

1091. Marks registrable on supplemental register; application and proceedings for registration; nature of mark; mark used in foreign commerce.

1092. Publication; not subject to opposition; cancellation.
1093. Registration certificates for marks on principal and supplemental registers to be different.
1094. Provisions of chapter applicable to registrations on supplemental register.
1095. Registration on principal register not precluded.
1096. Registration on supplemental register not used to stop importations.

§ 1091. Marks registrable on supplemental register; application and proceedings for registration; nature of mark; mark used in foreign commerce [Section 23]

In addition to the principal register, the Commissioner shall keep a continuation of the register provided in paragraph (b) of section 1 of the Act of March 19, 1920, entitled "An Act to give effect to certain provisions of the convention for the protection of trademarks and commercial names, made and signed in the city of Buenos Aires, in the Argentine Republic, August 20, 1910, and for other purposes," to be called the supplemental register. All marks capable of distinguishing applicant's goods or services and not registrable on the principal register provided in this chapter, except those declared to be unregistrable under paragraphs (a)–(d) of section 1052 of this title, which have been in lawful use in commerce by the proprietor thereof, upon or in connection with any goods or services for the year preceding the filing of the application may be registered on the supplemental register upon the payment of the prescribed fee and compliance with the provisions of section 1051 of this title so far as they are applicable.

Upon the filing of an application for registration on the supplemental register and payment of the fee herein provided the Commissioner shall refer the application to the examiner in charge of the registration of marks, who shall cause an examination to be made and if on such examination it shall appear that the applicant is entitled to registration, the registration shall be granted. If the applicant is found not entitled to registration the provisions of subsection (b) of section 1062 of this title shall apply.

For the purposes of registration on the supplemental register, a mark may consist of any trade-mark, symbol, label, package, configuration of goods, name, word, slogan, phrase, surname, geographical name, numeral, or device or any combination of any of the foregoing, but such mark must be capable of distinguishing the applicant's goods or services.

Upon a proper showing by the applicant that he requires domestic registration as a basis for foreign protection of his mark, the Commissioner may waive the requirement of a full year's use and may grant registration forthwith. (July 5, 1946, c. 540, Title II, sec. 23, 60 Stat. 435; October 9, 1962, Public Law 87–772, sec. 13, 76 Stat. 773.)

§ 1092. Publication; not subject to opposition; cancellation [Section 24]

Marks for the supplemental register shall not be published for or be subject to opposition, but shall be published on registration in the Official Gazette of the Patent and Trademark Office. Whenever any person believes that he is or will be damaged by the registration of a mark on this register he may at any time, upon payment of the prescribed fee and the filing of a verified petition stating the ground therefor, apply to the Commissioner to cancel such registration. The Commissioner shall refer such application to the Trademark Trial and Appeal Board which shall give notice thereof to the registrant. If it is found after a hearing before the Board that the registrant was not entitled to register the mark at the time of his application for registration thereof, or that the mark is not used by the registrant or has been abandoned, the registration shall be canceled by the Commissioner. (As amended January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949.)

§ 1093. Registration certificates for marks on principal and supplemental registers to be different [Section 25]

The certificates of registration for marks registered on the supplemental register shall be conspicuously different from certificates issued for marks registered on the principal register. (July 5, 1946, c. 540, Title II, sec. 25, 60 Stat. 436.)

§ 1094. Provisions of chapter applicable to registrations on supplemental register [Section 26]

The provisions of this chapter shall govern so far as applicable applications for registration and registrations on the supplemental register as well as those on the principal register, but applications for and registrations on the supplemental register shall not be subject to or receive the advantages of sections 1052(e), 1052(f), 1057(b), 1062(a),

1063 to 1068, inclusive, 1072, 1115 and 1124 of this title. (July 5, 1946, c. 540, Title II, sec. 26, 60 Stat. 436.)

§ 1095. Registration on principal register not precluded [Section 27]

Registration of a mark on the supplemental register, or under the Act of March 19, 1920, shall not preclude registration by the registrant on the principal register established by this chapter. (July 5, 1946, c. 540, Title II, sec. 27, 60 Stat. 436.)

§ 1096. Registration on supplemental register not used to stop importations [Section 28]

Registration on the supplemental register or under the Act of March 19, 1920, shall not be filed in the Department of the Treasury or be used to stop importations. (July 5, 1946, c. 540, Title II, sec. 28, 60 Stat. 436.)

SUBCHAPTER III — GENERAL PROVISIONS

SEC.

1111. Notice of registration; display with mark; recovery of profits and damages in infringement suit.
1112. Classification of goods and services; registration in plurality of classes.
1113. Fees.
1114. Remedies; infringement; innocent infringement by printers and publishers.
1115. Registration on principal register as evidence of exclusive right to use mark; defenses.
1116. Injunctions; enforcement; notice to Commissioner.
1117. Recovery for violation of rights; profits, damages and costs; attorney fees.
1118. Destruction of infringing articles.
1119. Power of court over registration.
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1121. Jurisdiction of Federal courts.
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1123. Rules and regulations for conduct of proceedings in Patent and Trademark Office.
1124. Importation of goods bearing infringing marks or names forbidden.
1125. False designations of origin and false descriptions forbidden.
1126. International conventions.
1127. Construction and definitions; intent of chapter.

§ 1111. Notice of registration; display with mark; recovery of profits and damages in infringement suit [Section 29]

Notwithstanding the provisions of section 1072 of this title, a registrant of a mark registered in the Patent and Trademark Office may give notice that his mark is registered by displaying with the mark as used the words "Registered in U.S. Patent and Trademark Office" or "Reg. U.S. Pat. & Tm. Off." or the letter R enclosed within a circle, thus ®; and in any suit for infringement under this chapter by such a registrant failing to give such notice of registration, no profits and no damages shall be recovered under the provisions of this chapter unless the defendant had actual notice of the registration. (As amended January 2, 1975, Public Law 93-596, sec. 1, 2, 88 Stat. 1949.)

§ 1112. Classification of goods and services; registration in plurality of classes [Section 30]

The Commissioner may establish a classification of goods and services, for convenience of Patent and Trademark Office administration, but not to limit or extend the applicant's rights. The applicant may file an application to register a mark for any or all of the goods and services upon or in connection with which he is actually using the mark: *Provided,* That when such goods or services fall within a plurality of classes, a fee equaling the sum of the fees for filing an application in each class shall be paid, and the Commissioner may issue a single certificate of registration for such mark. (As amended January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949.)

§ 1113. Fees [Section 31]

(a) The Commissioner will establish fees for the filing and processing of an application for the registration of a trademark or other mark and for all other services performed by and materials furnished by the Patent and Trademark Office related to trademarks and other marks. However, no fee for the filing or processing of an application for the registration of a trademark or other mark or for the renewal or assignment of a trademark or other mark will be adjusted more than once every three years. No fee established under this section will take effect prior to sixty days following notice in the Federal Register.

(b) The Commissioner may waive the payment of any fee for any service or material related to trademarks or other marks in connection

with an occasional request made by a department or agency of the Government, or any officer thereof. The Indian Arts and Crafts Board will not be charged any fee to register Government trademarks of genuineness and quality for Indian products or for products of particular Indian tribes and groups. (As amended July 24, 1965, Public Law 89-83, sec. 3, 79 Stat. 260; January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949; August 27, 1982, Public Law 97-247, sec. 3, 96 Stat. 319; September 8, 1982, Public Law 97-256, sec. 103, 96 Stat. 816.)

§ 1114. Remedies; infringement; innocent infringement by printers and publishers [Section 32]

(a) Any person who shall, without the consent of the registrant —

(1) use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or

(2) reproduce, counterfeit, copy, or colorably imitate a registered mark and apply such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive;

shall be liable in a civil action by the registrant for the remedies hereinafter provided. Under subsection (b) of this section, the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such imitation is intended to be used to cause confusion, or to cause mistake, or to deceive.

(b) Notwithstanding any other provision of this chapter, the remedies given to the owner of the right infringed shall be limited as follows: (a) Where an infringer is engaged solely in the business of printing the mark for others and establishes that he was an innocent infringer the owner of the right infringed shall be entitled as against such infringer only to an injunction against future printing; (b) where the infringement complained of is contained in or is part of paid advertising matter in a newspaper, magazine, or other similar periodical the remedies of the owner of the right infringed as against the publisher or distributor of such newspaper, magazine, or other similar

periodical shall be confined to an injunction against the presentation of such advertising matter in future issues of such newspapers, magazines, or other similar periodical: *Provided,* That these limitations shall apply only to innocent infringers; (c) injunction relief shall not be available to the owner of the right infringed in respect of an issue of a newspaper, magazine, or other similar periodical containing infringing matter when restraining the dissemination of such infringing matter in any particular issue of such periodical would delay the delivery of such issue after the regular time therefor, and such delay would be due to the method by which publication and distribution of such periodical is customarily conducted in accordance with sound business practice, and not to any method or device adopted for the evasion of this section or to prevent or delay the issuance of an injunction or restraining order with respect to such infringing matter. (July 5, 1946, c. 540, Title VI, sec. 32, 60 Stat. 437; October 9, 1962, Public Law 87-772, sec. 17, 76 Stat. 773.)

§ 1115. Registration on principal register as evidence of exclusive right to use mark; defenses [Section 33]

(a) Any registration issued under the Act of March 3, 1881, or the Act of February 20, 1905, or of a mark registered on the principal register provided by this chapter and owned by a party to an action shall be admissible in evidence and shall be prima facie evidence of registrant's exclusive right to use the registered mark in commerce on the goods or services specified in the registration subject to any conditions or limitations stated therein, but shall not preclude an opposing party from proving any legal or equitable defense or defect which might have been asserted if such mark had not been registered.

(b) If the right to use the registered mark has become incontestable under section 1065 of this title, the registration shall be conclusive evidence of the registrant's exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the affidavit filed under the provisions of said section 1065 subject to any conditions or limitations stated therein except when one of the following defenses or defects is established:

(1) That the registration or the incontestable right to use the mark was obtained fraudulently; or

(2) That the mark has been abandoned by the registrant; or

(3) That the registered mark is being used, by or with the permission of the registrant or a person in privity with the

registrant, so as to misrepresent the source of the goods or services in connection with which the mark is used; or

(4) That the use of the name, term, or device charged to be an infringement is a use, otherwise than as a trade or service mark, of the party's individual name in his own business, or of the individual name of anyone in privity with such party, or of a term or device which is descriptive of and used fairly and in good faith only to describe to users the goods or services of such party, or their geographic origin; or

(5) That the mark whose use by a party is charged as an infringement was adopted without knowledge of the registrant's prior use and has been continuously used by such party or those in privity with him from a date prior to registration of the mark under this chapter or publication of the registered mark under subsection (c) of section 1062 of this title: *Provided, however,* That this defense or defect shall apply only for the area in which such continuous prior use is proved; or

(6) That the mark whose use is charged as an infringement was registered and used prior to the registration under this chapter or publication under subsection (c) of section 1062 of this title of the registered mark of the registrant, and not abandoned: *Provided, however,* That this defense or defect shall apply only for the area in which the mark was used prior to such registration or such publication of the registrant's mark; or

(7) That the mark has been or is being used to violate the antitrust laws of the United States. (July 5, 1946, c. 540, Title VI, sec. 33, 60 Stat. 438; October 9, 1962, Public Law 87-772, sec. 18, 76 Stat. 774.)

§ 1116. Injunctions; enforcement; notice to Commissioner [Section 34]

(a) The several courts vested with jurisdiction of civil actions arising under this chapter shall have power to grant injunctions, according to the principles of equity and upon such terms as the court may deem reasonable, to prevent the violation of any right of the registrant of a mark registered in the Patent and Trademark Office. Any such injunction may include a provision directing the defendant to file with the court and serve on the plaintiff within thirty days after the service on the defendant of such injunction, or such extended period as the court may direct, a report in writing under oath

setting forth in detail the manner and form in which the defendant has complied with the injunction. Any such injunction granted upon hearing, after notice to the defendant, by any district court of the United States, may be served on the parties against whom such injunction is granted anywhere in the United States where they may be found, and shall be operative and may be enforced by proceedings to punish for contempt, or otherwise, by the court by which such injunction was granted, or by any other United States district court in whose jurisdiction the defendant may be found.

(b) The said courts shall have jurisdiction to enforce said injunction, as provided in this chapter, as fully as if the injunction had been granted by the district court in which it is sought to be enforced. The clerk of the court or judge granting the injunction shall, when required to do so by the court before which application to enforce said injunction is made, transfer without delay to said court a certified copy of all papers on file in his office upon which said injunction was granted.

(c) 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 provisions of this chapter to give notice thereof in writing to the Commissioner setting forth in order so far as known the names and addresses of the litigants and the designating number or numbers of the registration or registrations upon which the action, suit, or proceeding has been brought, and in the event any other registration be subsequently included in the action, suit, or proceeding by amendment, answer, or other pleading, the clerk shall give like notice thereof to the Commissioner, and within one month after the decision is rendered, appeal taken or a decree issued the clerk of the court shall give notice thereof to the Commissioner, and it shall be the duty of the Commissioner on receipt of such notice forthwith to endorse the same upon the file wrapper of the said registration or registrations and to incorporate the same as a part of the contents of said file wrapper. (July 5, 1946, c. 540, Title VI, sec. 34, 60 Stat. 439; January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949.)

(d)(1)(A) In the case of a civil action arising under section 32(1)(a) of this Act (15 U.S.C. 1114) or section 110 of the Act entitled "An Act to incorporate the United States Olympic Association", approved September 21, 1950 (36 U.S.C. 390) with respect to a violation that consists of using a counterfeit mark in connection with the sale, offering for sale, or distribution of goods or

services, the court may, upon ex parte application, grant an order under subsection (a) of this section pursuant to this subsection providing for the seizure of goods and counterfeit marks involved in such violation and the means of making such marks, and records documenting the manufacture, sale, or receipt of things involved in such violation.

(B) As used in this subsection the term "counterfeit mark" means —

(i) a counterfeit of a mark that is registered on the principal register in the United States Patent and Trademark Office for such goods or services sold, offered for sale, or distributed and that is in use, whether or not the person against whom relief is sought knew such mark was so registered; or

(ii) a spurious designation that is identical with, or substantially indistinguishable from, a designation as to which the remedies of this Act are made available by reason of section 110 of the Act entitled "An Act to incorporate the United States Olympic Association", approved September 21, 1950 (36 U.S.C. 380);

but such term does not include any mark or designation used in connection with goods or services of which the manufacturer or producer was, at the time of the manufacture or production in question, authorized to use the mark or designation for the type of goods or services so manufactured or produced, by the holder of the right to use such mark or designation.

(2) The court shall not receive an application under this subsection unless the applicant has given such notice of the application as is reasonable under the circumstances to the United States attorney for the judicial district in which such order is sought. Such attorney may participate in the proceedings arising under such application if such proceedings may affect evidence of an offense against the United States. The court may deny such application if the court determines that the public interest in a potential prosecution so requires.

(3) The application for an order under this subsection shall —

(A) be based on an affidavit or the verified complaint establishing facts sufficient to support the findings of fact and conclusions of law required for such order; and

(B) contain the additional information required by paragraph (5) of this subsection to be set forth in such order.

(4) The court shall not grant such an application unless —

(A) the person obtaining an order under this subsection provides the security determined adequate by the court for the payment of such damages as any person may be entitled to recover as a result of a wrongful seizure or wrongful attempted seizure under this subsection; and

(B) the court finds that it clearly appears from specific facts that —

(i) an order other than an ex parte seizure order is not adequate to achieve the purposes of section 32 of this Act (15 U.S.C. 1114);

(ii) the applicant has not publicized the requested seizure;

(iii) the applicant is likely to succeed in showing that the person against whom seizure would be ordered used a counterfeit mark in connection with the sale, offering for sale, or distribution of goods or services;

(iv) an immediate and irreparable injury will occur if such seizure is not ordered;

(v) the matter to be seized will be located at the place identified in the application;

(vi) the harm to the applicant of denying the application outweighs the harm to the legitimate interests of the person against whom seizure would be ordered of granting the application; and

(vii) the person against whom seizure would be ordered, or persons acting in concert with such person, would destroy, move, hide, or otherwise make such matter inaccessible to the court, if the applicant were to proceed on notice to such person.

(5) An order under this subsection shall set forth —

(A) the findings of fact and conclusions of law required for the order;

(B) a particular description of the matter to be seized, and a description of each place at which such matter is to be seized;

(C) the time period, which shall end not later than seven days after the date on which such order is issued, during which the seizure is to be made;

(D) the amount of security required to be provided under this subsection; and

(E) a date for the hearing required under paragraph (10) of this subsection.

(6) The court shall take appropriate action to protect the person against whom an order under this subsection is directed from publicity, by or at the behest of the plaintiff, about such order and any seizure under such order.

(7) Any materials seized under this subsection shall be taken into the custody of the court. The court shall enter an appropriate protective order with respect to discovery by the applicant of any records that have been seized. The protective order shall provide for appropriate procedures to assure that confidential information contained in such records is not improperly disclosed to the applicant.

(8) An order under this subsection, together with the supporting documents, shall be sealed until the person against whom the order is directed has an opportunity to contest such order, except that any person against whom such order is issued shall have access to such order and supporting documents after the seizure has been carried out.

(9) The court shall order that a United States marshal or other law enforcement officer is to serve a copy of the order under this subsection and then is to carry out the seizure under such order. The court shall issue orders, when appropriate, to protect the defendant from undue damage from the disclosure of trade secrets or other confidential information during the course of the seizure, including, when appropriate, orders restricting the access of the applicant (or any agent or employee of the applicant) to such secrets or information.

(10)(A) The court shall hold a hearing, unless waived by all the parties, on the date set by the court in the order of seizure. The date shall be not sooner than ten days after the order is issued and not later than fifteen days after the order is issued, unless the applicant for the order shows good cause for another date or unless the party against whom such order is directed consents to another date for such hearing. At such hearing the party obtaining the order shall have the burden to prove that the facts supporting findings of fact and conclusions of law necessary to support such order are still in effect. If that party fails to meet that burden, the seizure order shall be dissolved or modified appropriately.

(B) In connection with a hearing under this paragraph, the court may make such orders modifying the time limits for discovery under the Rules of Civil Procedure as may be necessary to prevent the frustration of the purposes of such hearing.

(11) A person who suffers damage by reason of a wrongful seizure under this subsection has a cause of action against the applicant for the order under which such seizure was made, and shall be entitled to recover such relief as may be appropriate, including damages for lost profits, cost of materials, loss of good will, and punitive damages in instances where the seizure was sought in bad faith, and, unless the court finds extenuating circumstances, to recover a reasonable attorney's fee. The court in its discretion may award prejudgment interest on relief recovered under this paragraph, at an annual interest rate established under section 6621 of the Internal Revenue Code of 1954, commencing on the date of service of the claimant's pleading setting forth the claim under this paragraph and ending on the date such recovery is granted, or for such shorter time as the court deems appropriate. (Added October 12, 1984; Public Law 98-473, sec. 1503(a); 98 Stat. 2179.)

§ 1117. Recovery for violation of rights; profits, damages and costs; attorney fees [Section 35]

(a) When a violation of any right of the registrant of a mark registered in the Patent and Trademark Office shall have been established in any civil action arising under this chapter, the plaintiff shall be entitled, subject to the provisions of sections 1111 and 1114 of this title, and subject to the principles of equity, to recover (1) defendant's profits, (2) any damages sustained by the plaintiff, and (3) the costs of the action. The court shall assess such profits and damages or cause the same to be assessed under its direction. In assessing profits the plaintiff shall be required to prove defendant's sales only; defendant must prove all elements of cost or deduction claimed. In assessing damages the court may enter judgment, according to the circumstances of the case, for any sum above the amount found as actual damages, not exceeding three times such amount. If the court shall find that the amount of the recovery based on profits is either inadequate or excessive the court may in its discretion enter judgment for such sum as the court shall find to be just, according to

the circumstances of the case. Such sum in either of the above circumstances shall constitute compensation and not a penalty. The court in exceptional cases may award reasonable attorney fees to the prevailing party. (July 5, 1946, c. 540, Title VI, sec. 35, 60 Stat. 439; October 9, 1962, Public Law 87-772, sec. 19, 76 Stat. 774; January 2, 1975, Public Law 93-596 sec. 1, 88 Stat. 1949, January 2, 1975, Public Law 93-600, sec. 3, 88 Stat. 1955.)

(b) In assessing damages under subsection (a), the court shall, unless the court finds extenuating circumstances, enter judgment for three times such profits or damages, whichever is greater, together with a reasonable attorney's fee, in the case of any violation of section 32(1)(a) of this Act (15 U.S.C. 1114(1)(a)) or section 110 of the Act entitled "An Act to incorporate the United States Olympic Association", approved September 21, 1950 (36 U.S.C. 380) that consists of intentionally using a mark or designation, knowing such mark or designation is a counterfeit mark (as defined in section 34(d) of this Act (15 U.S.C. 1116(d)), in connection with the sale, offering for sale, or distribution of goods or services. In such cases, the court may in its discretion award prejudgment interest on such amount at an annual interest rate established under section 6621 of the Internal Revenue Code of 1954, commencing on the date of the service of the claimant's pleadings setting forth the claim for such entry and ending on the date such entry is made, or for such shorter time as the court deems appropriate. (Added October 12, 1984, Public Law 98-473, sec. 1503(2), 98 Stat. 2182.)

§ 1118. Destruction of infringing articles [Section 36]

In any action arising under this chapter, in which a violation of any right of the registrant of a mark registered in the Patent and Trademark Office shall have been established, the court may order that all labels, signs, prints, packages, wrappers, receptacles, and advertisements in the possession of the defendant, bearing the registered mark or any reproduction, counterfeit, copy, or colorable imitation thereof, and all plates, molds, matrices, and other means of making the same, shall be delivered up and destroyed. The party seeking an order under this section for destruction of articles seized under section 34(d) (15 U.S.C. 1116(d)) shall give ten days' notice to the United States attorney for the judicial district in which such order is sought (unless good cause is shown for lesser notice) and such

United States attorney may, if such destruction may affect evidence of an offense against the United States, seek a hearing on such destruction or participate in any hearing otherwise to be held with respect to such destruction. (July 5, 1946, c. 540, Title VI, sec. 36, 60 Stat. 440; January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949; October 12, 1984, Public Law 98-473, sec. 1503(3), 98 Stat. 2182.)

§ 1119. Power of court over registration [Section 37]

In any action involving a registered mark the court may determine the right to registration, order the cancelation of registrations, in whole or in part, restore canceled registrations, and otherwise rectify the register with respect to the registrations of any party to the action. Decrees and orders shall be certified by the court to the Commissioner, who shall make appropriate entry upon the records of the patent and Trademark Office, and shall be controlled thereby. (July 5, 1946, c. 540, Title VI, sec. 37, 60 Stat. 440; January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949.)

§ 1120. Civil liability for false or fraudulent registration [Section 38]

Any person who shall procure registration in the Patent and Trademark Office of a mark by a false or fraudulent declaration or representation, oral or in writing, or by any false means, shall be liable in a civil action by any person injured thereby for any damages sustained in consequence thereof. (July 5, 1946, c. 540, Title VI, sec. 38, 60 Stat. 440; January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949.)

§ 1121. Jurisdiction of Federal courts [Section 39]

The district and territorial courts of the United States shall have original jurisdiction and the courts of appeal of the United States (other than the United States Court of Appeals for the Federal Circuit) shall have appellate jurisdiction, of all actions arising under this chapter, without regard to the amount in controversy or to diversity or lack of diversity of the citizenship of the parties. (July 5, 1946, c. 540, Title VI, sec. 39, 60 Stat. 440; June 25, 1948, c. 646, secs. 1, 32(a), 62 Stat. 870, 991; May 24, 1949, c. 139, sec. 127, 63 Stat. 107; April 2, 1982, Title I, sec. 148, 96 Stat. 46.)

(a) No State or other jurisdiction of the United States or any political subdivision or any agency thereof may require alteration of a registered mark, or require that additional trademarks, servicemarks, trade names, or corporate names that may be associated with or incorporated into the registered mark be displayed in the mark in a manner differing from the display of such additional trademarks, servicemarks, trade names, or corporate names contemplated by the registered mark as exhibited in the certificate of registration issued by the United States Patent and Trademark Office. (October 12, 1982, Public Law 97-296, 96 Stat. 1316.)

§ 1122. Repealed.

May 24, 1949, c. 139, sec. 142, 63 Stat. 109 [Section 40]

§ 1123. Rules and regulations for conduct of proceedings in Patent and Trademark Office [Section 41]

The Commissioner shall make rules and regulations, not inconsistent with law, for the conduct of proceedings in the Patent and Trademark Office under this chapter. (July 5, 1946, c. 540, Title VI, sec. 41, 60 Stat. 440; January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949.)

§ 1124. Importation of goods bearing infringing marks or names forbidden [Section 42]

Except as provided in subsection (d) of section 526 of the Tariff Act of 1930 [19 USCS § 1526(d)], no article of imported merchandise which shall copy or simulate the name of the [any] domestic manufacture, or manufacturer, or trader, or of any manufacturer or trader located in any foreign country which, by treaty, convention, or law affords similar privileges to citizens of the United States, or which shall copy or simulate a trademark registered in accordance with the provisions of this Act [15 USCS §§ 1051 et seq.] or shall bear a name or mark calculated to induce the public to believe that the article is manufactured in the United States, or that it is manufactured in any foreign country or locality other than the country or locality in which it is in fact manufactured, shall be admitted to entry at any customhouse of the United States; and, in order to aid the officers of the customs in enforcing this prohibition, any domestic manufacturer or trader, and any foreign manufacturer or trader, who is entitled under the provisions of a treaty, conviction, declaration, or agreement

between the United States and any foreign country to the advantages afforded by law to citizens of the United States in respect to trademarks and commercial names, may require his name and residence, and the name of the locality in which his goods are manufactured, and a copy of the certificate of registration of his trademark, issued in accordance with the provisions of this Act [15 USCS §§ 1051 et seq.], to be recorded in books which shall be kept for this purpose in the Department of the Treasury, under such regulations as the Secretary of the Treasury shall prescribe, and may furnish to the Department facsimiles of his name, the name of the locality in which his goods are manufactured, or of his registered trademark, and thereupon the Secretary of the Treasury shall cause one or more copies of the same to be transmitted to each collector or other proper officer of customs. (As amended October 3, 1978, Public Law 95-410, Title II, sec. 211(b), 92 Stat. 903.)

§ 1125. False designations of origin and false descriptions forbidden [Section 43]

(a) Any person who shall affix, apply, or annex, or use in connection with any goods or services, or any container or containers for goods, a false designation of origin, or any false description or representation, including words or other symbols tending falsely to describe or represent the same, and shall cause such goods or services to enter into commerce, and any person who shall with knowledge of the falsity of such designation of origin or description or representation cause or procure the same to be transported or used in commerce or deliver the same to any carrier to be transported or used, shall be liable to a civil action by any person doing business in the locality falsely indicated as that of origin or in the region in which said locality is situated, or by any person who believes that he is or is likely to be damaged by the use of any such false description or representation.

(b) Any goods marked or labeled in contravention of the provisions of this section shall not be imported into the United States or admitted to entry at any customhouse of the United States. The owner, importer, or consignee of goods refused entry at any customhouse under this section may have any recourse by protest or appeal that is given under the customs revenue laws or may have the remedy given by this chapter in cases involving goods refused entry or seized. (July 5, 1946, c. 540, Title VIII, sec. 43, 60 Stat. 441.)

Register of marks communicated by international bureaus

(a) The Commissioner shall keep a register of all marks communicated to him by the international bureaus provided for by the conventions for the protection of industrial property, trademarks, trade and commercial names, and the repression of unfair competition to which the United States is or may become a party, and upon the payment of the fees required by such conventions and the fees herein prescribed may place the marks so communicated upon such register. This register shall show a facsimile of the mark or trade or commercial name; the name, citizenship, and address of the registrant; the number, date, and place of the first registration of the mark, including the dates on which application for such registration was filed and granted and the term of such registration; a list of goods or services to which the mark is applied as shown by the registration in the country of origin, and such other data as may be useful concerning the mark. This register shall be a continuation of the register provided in section 1(a) of the Act of March 19, 1920.

Benefits of section to persons whose country of origin is party to convention or treaty

(b) Any person whose country of origin is a party to any convention or treaty relating to trademarks, trade or commercial names, or the repression of unfair competition, to which the United States is also a party, or extends reciprocal rights to nationals of the United States by law, shall be entitled to the benefits of this section under the conditions expressed herein to the extent necessary to give effect to any provision of such convention, treaty or reciprocal law, in addition to the rights to which any owner of a mark is otherwise entitled by this chapter.

Prior registration in country of origin; country of origin defined

(c) No registration of a mark in the United States by a person described in subsection (b) of this section shall be granted until such mark has been registered in the country of origin of the applicant, unless the applicant alleges use in commerce.

For the purposes of this section, the country of origin of the applicant is the country in which he has a bona fide and effective industrial or commercial establishment, or if he has not such an establishment the country in which he is domiciled, or if he has not a

domicile in any of the countries described in subsection (b) of this section, the country of which he is a national.

Right of priority

(d) An application for registration of a mark under sections 1051, 1052, 1053, 1054 or 1091 of this title, filed by a person described in subsection (b) of this section who has previously duly filed an application for registration of the same mark in one of the countries described in subsection (b) of this section shall be accorded the same force and effect as would be accorded to the same application if filed in the United States on the same date on which the application was first filed in such foreign country: *Provided,* That —

(1) the application in the United States is filed within six months from the date on which the application was first filed in the foreign country;

(2) the application conforms as nearly as practicable to the requirements of this chapter, but use in commerce need not be alleged;

(3) the rights acquired by third parties before the date of the filing of the first application in the foreign country shall in no way be affected by a registration obtained on an application filed under this subsection;

(4) nothing in this subsection shall entitle the owner of a registration granted under this section to sue for acts committed prior to the date on which his mark was registered in this country unless the registration is based on use in commerce.

In like manner and subject to the same conditions and requirements, the right provided in this section may be based upon a subsequent regularly filed application in the same foreign country, instead of the first filed foreign application: *Provided,* That any foreign application filed prior to such subsequent application has been withdrawn, abandoned, or otherwise disposed of, without having been laid open to public inspection and without leaving any rights outstanding, and has not served, nor thereafter shall serve, as a basis for claiming a right of priority.

Registration on principal or supplemental register; copy of foreign registration

(e) A mark duly registered in the country of origin of the foreign applicant may be registered on the principal register if eligible,

otherwise on the supplemental register in this chapter provided. The application therefor shall be accompanied by a certification or a certified copy of the registration in the country of origin of the applicant.

Domestic registration independent of foreign registration

(f) The registration of a mark under the provisions of subsections (c), (d), and (e) of this section by a person described in subsection (b) of this section shall be independent of the registration in the country of origin and the duration, validity, or transfer in the United States of such registration shall be governed by the provisions of this chapter.

Trade or commercial names of foreign nationals protected without registration

(g) Trade names or commercial names of persons described in subsection (b) of this section shall be protected without the obligation of filing or registration whether or not they form parts of marks.

Protection of foreign nationals against unfair competition

(h) Any person designated in subsection (b) of this section as entitled to the benefits and subject to the provisions of this chapter shall be entitled to effective protection against unfair competition, and the remedies provided in this chapter for infringement of marks shall be available so far as they may be appropriate in repressing acts of unfair competition.

Citizens or residents of United States entitled to benefits of section

(i) Citizens or residents of the United States shall have the same benefits as are granted by this section to persons described in subsection (b) of this section. (July 5, 1946, c. 540, Title IX, sec. 44, 60 Stat. 441; October 3, 1961, Public Law 87-333, sec. 2, 75 Stat. 748; October 9, 1962, Public Law 87-772, sec. 20, 76 Stat. 774.)

§ 1127. Construction and definitions; intent of chapter [Section 45]

In the construction of this chapter, unless the contrary is plainly apparent from the context —

The United States includes and embraces all territory which is under its jurisdiction and control.

The word "commerce" means all commerce which may lawfully be regulated by Congress.

The term "principal register" refers to the register provided for by sections 1051 to 1072 of this title, and the term "supplemental

register" refers to the register provided for by sections 1091 to 1096 of this title.

The term "person" and any other word or term used to designate the applicant or other entitled to a benefit or privilege or rendered liable under the provisions of this chapter includes a juristic person as well as a natural person. The term "juristic person" includes a firm, corporation, union, association, or other organization capable of suing and being sued in a court of law.

The terms "applicant" and "registrant" embrace the legal representatives, predecessors, successors and assigns of such applicant or registrant.

The term "Commissioner" means the Commissioner of Patents and Trademarks.

The term "related company" means any person who legitimately controls or is controlled by the registrant or applicant for registration in respect to the nature and quality of the goods or services in connection with which the mark is used.

The terms "trade name" and "commercial name" include individual names and surnames, firm names and trade names used by manufacturers, industrialists, merchants, agriculturists, and others to identify their businesses, vocations, or occupations; the names or titles lawfully adopted and used by persons, firms, associations, corporations, companies, unions, and any manufacturing, industrial, commercial, agricultural, or other organizations engaged in trade or commerce and capable of suing and being sued in a court of law.

The term "trademark" includes any word, name, symbol, or device or any combination thereof adopted and used by a manufacturer or merchant to identify his goods, including a unique product, and distinguish them from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown.

The term "service mark" means a mark used in the sale or advertising of services to identify and distinguish the services of one person, including a unique service, from the services of others and to indicate the source of the services, even if that source is unknown.

The term "certification mark" means a mark used upon or in connection with the products or services of one or more persons other than the owner of the mark to certify regional or other origin, material, mode of manufacture, quality, accuracy or other characteristics of such goods or services or that the work or labor on the goods

or services was performed by members of a union or other organization.

The term "collective mark" means a trademark or service mark used by the members of a cooperative, an association or other collective group or organization and includes marks used to indicate membership in a union, an association or other organization.

The term "mark" includes any trademark, service mark, collective mark, or certification mark entitled to registration under this chapter whether registered or not.

For the purposes of this chapter a mark shall be deemed to be used in commerce (a) on goods when it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto and the goods are sold or transported in commerce and (b) on services when it is used or displayed in the sale or advertising of services and the services are rendered in commerce, or the services are rendered in more than one State or in this and a foreign country and the person rendering the services is engaged in commerce in connection therewith.

A mark shall be deemed to be "abandoned" —

(a) When its use has been discontinued with intent not to resume. Intent not to resume may be inferred from circumstances. Nonuse for two consecutive years shall be prima facie abandonment.

(b) When any course of conduct of the registrant, including acts of omission as well as commission, causes the mark to lose its significance as an indication of origin. Purchaser motivation shall not be a test for determining abandonment under this subparagraph.

The term "colorable imitation" includes any mark which so resembles a registered mark as to be likely to cause confusion or mistake or to deceive.

The term "registered mark" means a mark registered in the United States Patent and Trademark Office under this chapter or under the Act of March 3, 1881, or the Act of February 20, 1905, or the Act of March 19, 1920. The phrase "marks registered in the Patent and Trademark Office" means registered marks.

The term "Act of March 3, 1881", "Act of February 20, 1905", or "Act of March 19, 1920," means the respective Act as amended.

A "counterfeit" is a spurious mark which is identical with, or substantially indistinguishable from, a registered mark.

Words used in the singular include the plural and vice versa.

The intent of this chapter is to regulate commerce within the control of Congress by making actionable the deceptive and misleading use of marks in such commerce; to protect registered marks used in such commerce from interference by State, or territorial legislation; to protect persons engaged in such commerce against unfair competition; to prevent fraud and deception in such commerce by the use of reproductions, copies, counterfeits, or colorable imitations of registered marks; and to provide rights and remedies stipulated by treaties and conventions respecting trademarks, trade names, and unfair competition entered into between the United States and foreign nations. (July 5, 1946, c. 540, Title X, sec. 45, 60 Stat. 443; October 9, 1962, Public Law 87-772, sec. 21, 76 Stat. 774; January 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949; Amended November 8, 1984, Public Law 98-620, sec. 103, 98 Stat. 3336.)

UNITED STATES CODE

TITLE 17 — COPYRIGHTS

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§ 101. Definitions

As used in this title, the following terms and their variant forms mean the following:

An "anonymous work" is a work on the copies or phonorecords of which no natural person is identified as author.

"Audiovisual works" are works that consist of a series of related images which are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied.

The "best edition" of a work is the edition, published in the United States at any time before the date of deposit, that the Library of Congress determines to be most suitable for its purposes.

A person's "children" are that person's immediate offspring, whether legitimate or not, and any children legally adopted by that person.

A "collective work" is a work, such as a periodical issue, anthology, or encyclopedia, in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole.

A "compilation" is a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship. The term "compilation" includes collective works.

"Copies" are material objects, other than phonorecords, in which a work is fixed by any method now known or later developed, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term "copies" includes the material object, other than a phonorecord, in which the work is first fixed.

"Copyright owner", with respect to any one of the exclusive rights comprised in a copyright, refers to the owner of that particular right.

A work is "created" when it is fixed in a copy or phonorecord for the first time; where a work is prepared over a period of time, the portion of it that has been fixed at any particular time constitutes the work as of that time, and where the work has been prepared in different versions, each version constitutes a separate work.

A "derivative work" is a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications which, as a whole, represent an original work of authorship, is a "derivative work".

A "device", "machine", or "process" is one now known or later developed.

To "display" a work means to show a copy of it, either directly or by means of a film, slide, television image, or any other device

or process or, in the case of a motion picture or other audiovisual work, to show individual images nonsequentially.

A work is "fixed" in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work consisting of sounds, images, or both, that are being transmitted, is "fixed" for purposes of this title if a fixation of the work is being made simultaneously with its transmission.

The terms "including" and "such as" are illustrative and not limitative.

A "joint work" is a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.

"Literary works" are works, other than audiovisual works, expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material objects, such as books, periodicals, manuscripts, phonorecords, film, tapes, disks, or cards, in which they are embodied.

"Motion pictures" are audiovisual works consisting of a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.

To "perform" a work means to recite, render, play, dance, or act it, either directly or by means of any device or process or, in the case of a motion picture or other audiovisual work, to show its images in any sequence or to make the sounds accompanying it audible.

"Phonorecords" are material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term "phonorecords" includes the material object in which the sounds are first fixed.

"Pictorial, graphic, and sculptural works" include two-dimensional and three-dimensional works of fine, graphic, and applied art, photographs, prints and art reproductions, maps, globes, charts, technical drawings, diagrams, and models. Such works shall include works of artistic craftsmanship insofar as their form but not their mechanical or utilitarian aspects are concerned; the design of

a useful article, as defined in this section, shall be considered a pictorial, graphic, or sculptural work only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article.

A "pseudonymous work" is a work on the copies or phonorecords of which the author is identified under a fictitious name.

"Publication" is the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance or public display, constitutes publication. A public performance or display of a work does not of itself constitute publication.

To perform or display a work "publicly" means —

(1) to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or

(2) to transmit or otherwise communicate a performance or display of the work to a place specified by clause (1) or to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times.

"Sound recordings" are works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work, regardless of the nature of the material objects, such as disks, tapes, or other phonorecords, in which they are embodied.

"State" includes the District of Columbia and the Commonwealth of Puerto Rico, and any territories to which this title is made applicable by an Act of Congress.

A "transfer of copyright ownership" is an assignment, mortgage, exclusive license, or any other conveyance, alienation, or hypothecation of a copyright or of any of the exclusive rights comprised in a copyright, whether or not it is limited in time or place of effect, but not including a nonexclusive license.

A "transmission program" is a body of material that, as an aggregate has been produced for the sole purpose of transmission to the public in sequence and as a unit.

To "transmit" a performance or display is to communicate it by any device or process whereby images or sounds are received beyond the place from which they are sent.

The "United States", when used in a geographical sense, comprises the several States, the District of Columbia and the Commonwealth of Puerto Rico, and the organized territories under the jurisdiction of the United States Government.

A "useful article" is an article having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information. An article that is normally a part of a useful article is considered a "useful article".

The author's "widow" or "widower" is the author's surviving spouse under the law of the author's domicile at the time of his or her death, whether or not the spouse has later remarried.

A "work of the United States Government" is a work prepared by an officer or employee of the United States Government as part of that person's official duties.

A "work made for hire" is —

(1) a work prepared by an employee within the scope of his or her employment; or

(2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. For the purpose of the foregoing sentence, a "supplementary work" is a work prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, afterwords, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes, and indexes, and an "instructional text" is a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities.

A "computer program" is a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result. (Added December 12, 1980, Public Law 96-517, sec. 10(a), 94 Stat. 3028.)

§ 102. Subject matter of copyright: In general

(a) Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories:

(1) literary works;
(2) musical works, including any accompanying words;
(3) dramatic works, including any accompanying music;
(4) pantomimes and choreographic works;
(5) pictorial, graphic, and sculptural works;
(6) motion pictures and other audiovisual works; and
(7) sound recordings.

(b) In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

§ 103. Subject matter of copyright: Compilations and derivative works

(a) The subject matter of copyright as specified by section 102 includes compilations and derivative works, but protection for a work employing preexisting material in which copyright subsists does not extend to any part of the work in which such material has been used unlawfully.

(b) The copyright in a compilation or derivative work extends only to the material contributed by the author of such work, as distinguished from the preexisting material employed in the work, and does not imply any exclusive right in the preexisting material. The copyright in such work is independent of, and does not affect or enlarge the scope, duration, ownership, or subsistence of, any copyright protection in the preexisting material.

§ 104. Subject matter of copyright: National origin

(a) Unpublished Works — The works specified by sections 102 and 103, while unpublished, are subject to protection under this title without regard to the nationality or domicile of the author.

(b) Published Works — The works specified by sections 102 and 103, when published, are subject to protection under this title if —

(1) on the date of first publication, one or more of the authors is a national or domiciliary of the United States, or is a national, domiciliary, or sovereign authority of a foreign nation that is a party to a copyright treaty to which the United States is also a party, or is a stateless person, wherever that person may be domiciled; or

(2) the work is first published in the United States or in a foreign nation that, on the date of first publication, is a party to the Universal Copyright Convention; or

(3) the work is first published by the United Nations or any of its specialized agencies, or by the Organization of American States; or

(4) the work comes within the scope of a Presidential proclamation. Whenever the President finds that a particular foreign nation extends, to works by authors who are nationals or domiciliaries of the United States or to works that are first published in the United States, copyright protection on substantially the same basis as that on which the foreign nation extends protection to works of its own nationals and domiciliaries and works first published in that nation, the President may by proclamation extend protection under this title to works of which one or more of the authors is, on the date of first publication, a national, domiciliary, or sovereign authority of that nation, or which was first published in that nation. The President may revise, suspend, or revoke any such proclamation or impose any conditions or limitations on protection under a proclamation.

§ 105. Subject matter of copyright: United States Government works

Copyright protection under this title is not available for any work of the United States Government, but the United States Government is not precluded from receiving and holding copyrights transferred to it by assignment, bequest, or otherwise.

§ 106. Exclusive rights in copyrighted works

Subject to sections 107 through 118, the owner of copyright under this title has the exclusive right to do and to authorize any of the following:

(1) to reproduce the copyrighted work in copies or phonorecords;

(2) to prepare derivative works based upon the copyrighted work;

(3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

(4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly; and

(5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly.

§ 107. Limitations on exclusive rights: Fair use

Notwithstanding the provisions of section 106, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include —

(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

(2) the nature of the copyrighted work;

(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

(4) the effect of the use upon the potential market for or value of the copyrighted work.

§ 108. Limitations on exclusive rights: Reproduction by libraries and archives

(a) Notwithstanding the provisions of section 106, it is not an infringement of copyright for a library or archives, or any of its employees acting within the scope of their employment, to reproduce no more than one copy or phonorecord of a work, or to distribute

such copy or phonorecord, under the conditions specified by this section, if —

(1) the reproduction or distribution is made without any purpose of direct or indirect commercial advantage;

(2) the collections of the library or archives are (i) open to the public, or (ii) available not only to researchers affiliated with the library or archives or with the institution of which it is a part, but also to other persons doing research in a specialized field; and

(3) the reproduction or distribution of the work includes a notice of copyright.

(b) The rights of reproduction and distribution under this section apply to a copy or phonorecord of an unpublished work duplicated in facsimile form solely for purposes of preservation and security or for deposit for research use in another library or archives of the type described by clause (2) of subsection (a), if the copy or phonorecord reproduced is currently in the collections of the library or archives.

(c) The right of reproduction under this section applies to a copy or phonorecord of a published work duplicated in facsimile form solely for the purpose of replacement of a copy or phonorecord that is damaged, deteriorating, lost, or stolen, if the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price.

(d) The rights of reproduction and distribution under this section apply to a copy, made from the collection of a library or archives where the user makes his or her request or from that of another library or archives, of no more than one article or other contribution to a copyrighted collection or periodical issue, or to a copy or phonorecord of a small part of any other copyrighted work, if —

(1) the copy or phonorecord becomes the property of the user, and the library or archives has had no notice that the copy or phonorecord would be used for any purpose other than private study, scholarship, or research; and

(2) the library or archives displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.

(e) The rights of reproduction and distribution under this section apply to the entire work, or to a substantial part of it, made from the collection of a library or archives where the user makes his or her request or from that of another library or archives, if the library or

archives has first determined, on the basis of a reasonable investigation, that a copy or phonorecord of the copyrighted work cannot be obtained at a fair price, if —

(1) the copy or phonorecord becomes the property of the user, and the library or archives has had no notice that the copy or phonorecord would be used for any purpose other than private study, scholarship, or research; and

(2) The library or archives displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.

(f) Nothing in this section —

(1) shall be construed to impose liability for copyright infringement upon a library or archives or its employees for the unsupervised use of reproducing equipment located on its premises: *Provided,* That such equipment displays a notice that the making of a copy may be subject to the copyright law;

(2) excuses a person who uses such reproducing equipment or who requests a copy or phonorecord under subsection (d) from liability for copyright infringement for any such act, or for any later use of such copy or phonorecord, if it exceeds fair use as provided by section 107;

(3) shall be construed to limit the reproduction and distribution by lending of a limited number of copies and excerpts by a library or archives of an audiovisual news program, subject to clauses (1), (2), and (3) of subsection (a); or

(4) in any way affects the right of fair use as provided by section 107, or any contractual obligations assumed at any time by the library or archives when it obtained a copy or phonorecord of a work in its collections.

(g) The rights of reproduction and distribution under this section extend to the isolated and unrelated reproduction or distribution of a single copy or phonorecord of the same material on separate occasions, but do not extend to cases where the library or archives, or its employee —

(1) is aware or has substantial reason to believe that it is engaging in the related or concerted reproduction or distribution of multiple copies or phonorecords of the same material, whether made on one occasion or over a period of time, and whether

intended for aggregate use by one or more individuals or for separate use by the individual members of a group; or

(2) engages in the systematic reproduction or distribution of single or multiple copies or phonorecords of material described in subsection (d): *Provided,* That nothing in this clause prevents a library or archives from participating in interlibrary arrangements that do not have, as their purpose or effect, that the library or archives receiving such copies or phonorecords for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work.

(h) The rights of reproduction and distribution under this section do not apply to a musical work, a pictorial, graphic or sculptural work, or a motion picture or other audiovisual work other than an audiovisual work dealing with news, except that no such limitation shall apply with respect to rights granted by subsections (b) and (c), or with respect to pictorial or graphic works published as illustrations, diagrams, or similar adjuncts to works of which copies are reproduced or distributed in accordance with subsections (d) and (e).

(i) Five years from the effective date of this Act, and at five-year intervals thereafter, the Register of Copyrights, after consulting with representatives of authors, book and periodical publishers, and other owners of copyrighted materials, and with representatives of library users and librarians, shall submit to the Congress a report setting forth the extent to which this section has achieved the intended statutory balancing of the rights of creators, and the needs of users. The report should also describe any problems that may have arisen, and present legislative or other recommendations, if warranted.

§ 109. Limitations on exclusive rights: Effect of transfer of particular copy or phonorecord

(a) Notwithstanding the provisions of section 106(3), the owner of a particular copy or phonorecord lawfully made under this title, or any person authorized by such owner, is entitled, without the authority of the copyright owner, to sell or otherwise dispose of the possession of that copy or phonorecord.

(b)(1) Notwithstanding the provisions of subsection (a), unless authorized by the owners of copyright in the sound recording and in the musical works embodied therein, the owner of a particular phonorecord may not, for purposes of direct or indirect commercial advantage, dispose of, or authorize the disposal of, the

possession of that phonorecord by rental, lease, or lending, or by any other act or practice in the nature of rental, lease, or lending. Nothing in the preceding sentence shall apply to the rental, lease, or lending of a phonorecord for nonprofit purposes by a nonprofit library or nonprofit educational institution.

(2) Nothing in this subsection shall affect any provision of the antitrust laws. For purposes of the preceding sentence, "antitrust laws" has the meaning given that term in the first section of the Clayton Act and includes section 5 of the Federal Trade Commission Act to the extent that section relates to unfair methods of competition.

(3) Any person who distributes a phonorecord in violation of clause (1) is an infringer of copyright under section 501 of this title and is subject to the remedies set forth in sections 502, 503, 504, 505, and 509. Such violation shall not be a criminal offense under section 506 or cause such person to be subject to the criminal penalties set forth in section 2319 of title 18. (Added October 4, 1984, Public Law 98-450, sec. 2(2), 98 Stat. 1727.)

(c) Notwithstanding the provisions of section 106(5), the owner of a particular copy lawfully made under this title, or any person authorized by such owner, is entitled, without the authority of the copyright owner, to display that copy publicly, either directly or by the projection of no more than one image at a time, to viewers present at the place where the copy is located. (Amended October 4, 1984, Public Law 98–450, sec. 2(1), 98 Stat. 1727.)

(d) The privileges prescribed by subsections (a) and (b) do not, unless authorized by the copyright owner, extend to any person who has acquired possession of the copy or phonorecord from the copyright owner, by rental, lease, loan, or otherwise, without acquiring ownership of it. (Amended October 4, 1984, Public Law 98–450, sec. 2(1), 98 Stat. 1727.)

§ 110. Limitations on exclusive rights: Exemption of certain performances and displays

Notwithstanding the provisions of section 106, the following are not infringements of copyright:

(1) performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other

audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made under this title, and that the person responsible for the performance knew or had reason to believe was not lawfully made;

(2) performance of a nondramatic literary or musical work or display of a work, by or in the course of a transmission, if —

(A) the performance or display is a regular part of the systematic instructional activities of a governmental body or a nonprofit educational institution; and

(B) the performance or display is directly related and of material assistance to the teaching content of the transmission; and

(C) the transmission is made primarily for —

(i) reception in classrooms or similar places normally devoted to instruction, or

(ii) reception by persons to whom the transmission is directed because their disabilities or other special circumstances prevent their attendance in classrooms or similar places normally devoted to instruction, or

(iii) reception by officers or employees of governmental bodies as a part of their official duties or employment;

(3) performance of a nondramatic literary or musical work or of a dramatical-musical work of a religious nature, or display of a work, in the course of services at a place of worship or other religious assembly;

(4) performance of a nondramatic literary or musical work otherwise than in a transmission to the public, without any purpose of direct or indirect commercial advantage and without payment of any fee or other compensation for the performance to any of its performers, promoters, or organizers, if —

(A) there is no direct or indirect admission charge; or

(B) the proceeds, after deducting the reasonable costs of producing the performance, are used exclusively for educational, religious, or charitable purposes and not for private financial gain, except where the copyright owner has served notice of objection to the performance under the following conditions:

(i) the notice shall be in writing and signed by the copyright owner or such owner's duly authorized agent; and

(ii) the notice shall be served on the person responsible for

the performance at least seven days before the date of the performance, and shall state the reasons for the objection; and

(iii) the notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation;

(5) communication of a transmission embodying a performance or display of a work by the public reception of the transmission on a single receiving apparatus of a kind commonly used in private homes, unless —

(A) a direct charge is made to see or hear the transmission; or

(B) the transmission thus received is further transmitted to the public;

(6) performance of a nondramatic musical work by a governmental body or a nonprofit agricultural or horticultural organization, in the course of an annual agricultural or horticultural fair or exhibition conducted by such body or organization; the exemption provided by this clause shall extend to any liability for copyright infringement that would otherwise be imposed on such body or organization, under doctrines of vicarious liability or related infringement, for a performance by a concessionnaire, business establishment, or other person at such fair or exhibition, but shall not excuse any such person from liability for the performance;

(7) performance of a nondramatic musical work by a vending establishment open to the public at large without any direct or indirect admission charge, where the sole purpose of the performance is to promote the retail sale of copies or phonorecords of the work, and the performance is not transmitted beyond the place where the establishment is located and is within the immediate area where the sale is occurring;

(8) performance of a nondramatic literary work, by or in the course of a transmission specifically designed for and primarily directed to blind or other handicapped persons who are unable to read normal printed material as a result of their handicap, or deaf or other handicapped persons who are unable to hear the aural signals accompanying a transmission of visual signals, if the performance is made without any purpose of direct or indirect commercial advantage and its transmission is made through the facilities of: (i) a governmental body; or (ii) a noncommercial educational broadcast station (as defined in section 397 of title 47);

or (iii) a radio subcarrier authorization (as defined in 47 CFR 73.293-73.295 and 73.593-73.595); or (iv) a cable system (as defined in section 111(f)).

(9) performance on a single occasion of a dramatic literary work published at least ten years before the date of the performance, by or in the course of a transmission specifically designed for and primarily directed to blind or other handicapped persons who are unable to read normal printed material as a result of their handicap, if the performance is made without any purpose of direct or indirect commercial advantage and its transmission is made through the facilities of a radio subcarrier authorization referred to in clause (8) (iii), *Provided,* That the provisions of this clause shall not be applicable to more than one performance of the same work by the same performers or under the auspices of the same organization.

(10) notwithstanding paragraph 4 above, the following is not an infringement of copyright: performance of a nondramatic literary or musical work in the course of a social function which is organized and promoted by a nonprofit veterans' organization or a nonprofit fraternal organization to which the general public is not invited, but not including the invitees of the organizations, if the proceeds from the performance, after deducting the reasonable costs of producing the performance, are used exclusively for charitable purposes and not for financial gain. For purposes of this section the social functions of any college or university fraternity or sorority shall not be included unless the social function is held solely to raise funds for a specific charitable purpose. (Added October 25, 1982, Public Law 97-366, sec. 3, 96 Stat. 1759.)

§ 111. Limitations on exclusive rights: Secondary transmissions

(a) *Certain Secondary Transmissions Exempted* — The secondary transmission of a primary transmission embodying a performance or display of a work is not an infringement of copyright if —

(1) the secondary transmission is not made by a cable system, and consists entirely of the relaying, by the management of a hotel, apartment house, or similar establishment, of signals transmitted by a broadcast station licensed by the Federal Communications Commission, within the local service area of such station, to the private lodgings of guests or residents of such establishment, and no direct charge is made to see or hear the secondary transmission; or

(2) the secondary transmission is made solely for the purpose and under the conditions specified by clause (2) of section 110; or

(3) the secondary transmission is made by any carrier who has no direct or indirect control over the content or selection of the primary transmission or over the particular recipients of the secondary transmission, and whose activities with respect to the secondary transmission consist solely of providing wires, cables, or other communications channels for the use of others: *Provided,* That the provisions of this clause extend only to the activities of said carrier with respect to secondary transmissions and do not exempt from liability the activities of others with respect to their own primary or secondary transmissions; or

(4) the secondary transmission is not made by a cable system but is made by a governmental body, or other nonprofit organization, without any purpose of direct or indirect commercial advantage, and without charge to the recipients of the secondary transmission other than assessments necessary to defray the actual and reasonable costs of maintaining and operating the secondary transmission service.

(b) *Secondary Transmission of Primary Transmission to Controlled Group* — Notwithstanding the provisions of subsections (a) and (c), the secondary transmission to the public of a primary transmission embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, if the primary transmission is not made for reception by the public at large but is controlled and limited to reception by particular members of the public: *Provided,* however, that such secondary transmission is not actionable as an act of infringement if —

(1) the primary transmission is made by a broadcast station licensed by the Federal Communications Commission; and

(2) the carriage of the signals comprising the secondary transmission is required under the rules, regulations, or authorizations of the Federal Communications Commission; and

(3) the signal of the primary transmitter is not altered or changed in any way by the secondary transmitter.

(c) *Secondary Transmissions by Cable Systems* —

(1) Subject to the provisions of clauses (2), (3), and (4) of this subsection, secondary transmissions to the public by a cable system of a primary transmission made by a broadcast station licensed by

the Federal Communications Commission or by an appropriate governmental authority of Canada or Mexico and embodying a performance or display of a work shall be subject to compulsory licensing upon compliance with the requirements of subsection (d) where the carriage of the signals comprising the secondary transmission is permissible under the rules, regulations, or authorizations of the Federal Communications Commission.

(2) Notwithstanding the provisions of clause (1) of this subsection, the willful or repeated secondary transmission to the public by a cable system of a primary transmission made by a broadcast station licensed by the Federal Communications Commission or by an appropriate governmental authority of Canada or Mexico and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, in the following cases:

(A) where the carriage of the signals comprising the secondary transmission is not permissible under the rules, regulations, or authorizations of the Federal Communications Commission; or

(B) where the cable system has not recorded the notice specified by subsection (d) and deposited the statement of account and royalty fee required by subsection (d).

(3) Notwithstanding the provisions of clause (1) of this subsection and subject to the provisions of subsection (e) of this section, the secondary transmission to the public by a cable system of a primary transmission made by a broadcast station licensed by the Federal Communications Commission or by an appropriate governmental authority of Canada or Mexico and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and sections 509 and 510, if the content of the particular program in which the performance or display is embodied, or any commercial advertising or station announcements transmitted by the primary transmitter during, or immediately before or after, the transmission of such program, is in any way willfully altered by the cable system through changes, deletions, or additions, except for the alteration, deletion, or substitution of commercial advertisements performed by those engaged in television commercial advertising market research: *Provided,* That the research company has obtained the prior consent of the advertiser

who has purchased the original commercial advertisement, the television station broadcasting that commercial advertisement, and the cable system performing the secondary transmission: *And provided further*, That such commercial alteration, deletion, or substitution is not performed for the purpose of deriving income from the sale of that commercial time.

(4) Notwithstanding the provisions of clause (1) of this subsection, the secondary transmission to the public by a cable system of a primary transmission made by a broadcast station licensed by an appropriate governmental authority of Canada or Mexico and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and section 509, if (A) with respect to Canadian signals, the community of a cable system is located more than 150 miles from the United States-Canadian border and is also located south of the forty-second parallel of latitude, or (B) with respect to Mexican signals, the secondary transmission is made by a cable system which received the primary transmission by means other than direct interception of a free space radio wave emitted by such broadcast television station, unless prior to April 15, 1976, such cable system was actually carrying, or was specifically authorized to carry, the signal of such foreign station on the system pursuant to the rules, regulations, or authorizations of the Federal Communications Commission.

(d) *Compulsory License for Secondary Transmissions by Cable Systems* —

(1) For any secondary transmission to be subject to compulsory licensing under subsection (c), the cable system shall, at least one month before the date of the commencement of operations of the cable system or within one hundred and eighty days after the enactment of this Act, whichever is later, and thereafter within thirty days after each occasion on which the ownership or control or the signal carriage complement of the cable system changes, record in the Copyright Office a notice including a statement of the identity and address of the person who owns or operates the secondary transmission service or has power to exercise primary control over it, together with the name and location of the primary transmitter or primary transmitters whose signals are regularly carried by the cable system, and thereafter, from time to time, such

further information as the Register of Copyrights, after consultation with the Copyright Royalty Tribunal (if and when the Tribunal has been constituted), shall prescribe by regulation to carry out the purpose of this clause.

(2) A cable system whose secondary transmissions have been subject to compulsory licensing under subsection (c) shall, on a semiannual basis, deposit with the Register of Copyrights, in accordance with requirements that the Register shall, after consultation with the Copyright Royalty Tribunal (if and when the Tribunal has been constituted), prescribe by regulation —

(A) a statement of account, covering the six months next preceding, specifying the number of channels on which the cable system made secondary transmissions to its subscribers, the names and locations of all primary transmitters whose transmissions were further transmitted by the cable system, the total number of subscribers, the gross amounts paid to the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters, and such other data as the Register of Copyrights may, after consultation with the Copyright Royalty Tribunal (if and when the Tribunal has been constituted), from time to time prescribe by regulation. Such statement shall also include a special statement of account covering any nonnetwork television programming that was carried by the cable system in whole or in part beyond the local service area of the primary transmitter, under rules, regulations, or authorizations of the Federal Communications Commission permitting the substitution or addition of signals under certain circumstances, together with logs showing the times, dates, stations, and programs involved in such substituted or added carriage; and

(B) except in the case of a cable system whose royalty is specified in subclause (C) or (D), a total royalty fee for the period covered by the statement, computed on the basis of specified percentages of the gross receipts from subscribers to the cable service during said period for the basic service of providing secondary transmissions of primary broadcast transmitters, as follows:

(i) 0.675 of 1 per centum of such gross receipts for the privilege of further transmitting any nonnetwork programming of a primary transmitter in whole or in part beyond the

local service area of such primary transmitter, such amount to be applied against the fee, if any, payable pursuant to paragraphs (ii) through (iv);

(ii) 0.675 of 1 per centum of such gross receipts for the first distant signal equivalent;

(iii) 0.425 of 1 per centum of such gross receipts for each of the second, third, and fourth distant signal equivalents;

(iv) 0.2 of 1 per centum of such gross receipts for the fifth distant signal equivalent and each additional distant signal equivalent thereafter; and

in computing the amounts payable under paragraph (ii) through (iv), above, any fraction of a distant signal equivalent shall be computed at its fractional value and, in the case of any cable system located partly within and partly without the local service area of a primary transmitter, gross receipts shall be limited to those gross receipts derived from subscribers located without the local service area of such primary transmitter; and

(C) if the actual gross receipts paid by subscribers to a cable system for the period covered by the statement for the basic service of providing secondary transmissions of primary broadcast transmitters total $80,000 or less, gross receipts of the cable system for the purpose of this subclause shall be computed by subtracting from such actual gross receipts the amount by which $80,000 exceeds such actual gross receipts, except that in no case shall a cable system's gross receipts be reduced to less than $3,000. The royalty fee payable under this subclause shall be 0.5 of 1 per centum, regardless of the number of distant signal equivalents, if any; and

(D) if the actual gross receipts paid by subscribers to a cable system for the period covered by the statement, for the basic service of providing secondary transmissions of primary broadcast transmitters, are more than $80,000 but less than $160,000, the royalty fee payable under this subclause shall be (i) 0.5 of 1 per centum of any gross receipts up to $80,000; and (ii) 1 per centum of any gross receipts in excess of $80,000 but less than $160,000, regardless of the number of distant signal equivalents, if any.

(3) The Register of Copyrights shall receive all fees deposited under this section and, after deducting the reasonable costs incurred by the Copyright Office under this section, shall deposit

the balance in the Treasury of the United States, in such manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest-bearing United States securities for later distribution with interest by the Copyright Royalty Tribunal as provided by this title. The Register shall submit to the Copyright Royalty Tribunal, on a semiannual basis, a compilation of all statements of account covering the relevant six-month period provided by clause (2) of this subsection.

(4) The royalty fees thus deposited shall, in accordance with the procedures provided by clause (5), be distributed to those among the following copyright owners who claim that their works were the subject of secondary transmissions by cable systems during the relevant semiannual period:

(A) any such owner whose work was included in a secondary transmission made by a cable system of a nonnetwork television program in whole or in part beyond the local service area of the primary transmitter; and

(B) any such owner whose work was included in a secondary transmission identified in a special statement of account deposited under clause (2)(A); and

(C) any such owner whose work was included in nonnetwork programing consisting exclusively of aural signals carried by a cable system in whole or in part beyond the local service area of the primary transmitter of such programs.

(5) The royalty fees thus deposited shall be distributed in accordance with the following procedures:

(A) During the month of July in each year, every person claiming to be entitled to compulsory license fees for secondary transmissions shall file a claim with the Copyright Royalty Tribunal, in accordance with requirements that the Tribunal shall prescribe by regulation. Notwithstanding any provisions of the antitrust laws, for purposes of this clause any claimants may agree among themselves as to the proportionate division of compulsory licensing fees among them, may lump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf.

(B) After the first day of August of each year, the Copyright Royalty Tribunal shall determine whether there exists a controversy concerning the distribution of royalty fees. If the Tribunal determines that no such controversy exists, it shall, after deduct-

ing its reasonable administrative costs under this section, distribute such fees to the copyright owners entitled, or to their designated agents. If the Tribunal finds the existence of a controversy, it shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty fees.

(C) During the pendency of any proceeding under this subsection, the Copyright Royalty Tribunal shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have discretion to proceed to distribute any amounts that are not in controversy.

(e) *Nonsimultaneous Secondary Transmissions by Cable Systems* —

(1) Notwithstanding those provisions of the second paragraph of subsection (f) relating to nonsimultaneous secondary transmissions by a cable system, any such transmissions are actionable as an act of infringement under section 501, and are fully subject to the remedies provided by sections 502 through 506 and sections 509 and 510, unless —

(A) the program on the videotape is transmitted no more than one time to the cable system's subscribers; and

(B) the copyrighted program, episode, or motion picture videotape, including the commercials contained within such program, episode, or picture, is transmitted without deletion or editing; and

(C) an owner or officer of the cable system (i) prevents the duplication of the videotape while in the possession of the system, (ii) prevents unauthorized duplication while in the possession of the facility making the videotape for the system if the system owns or controls the facility, or takes reasonable precautions to prevent such duplication if it does not own or control the facility, (iii) takes adequate precautions to prevent duplication while the tape is being transported, and (iv) subject to clause (2), erases or destroys, or causes the erasure or destruction of, the videotape; and

(D) within forty-five days after the end of each calendar quarter, an owner or officer of the cable system executes an affidavit attesting (i) to the steps and precautions taken to prevent duplication of the videotape, and (ii) subject to clause (2), to the erasure or destruction of all videotapes made or used during such quarter; and

(E) such owner or officer places or causes each such affidavit and affidavits received pursuant to clause (2) (C), to be placed in a file, open to public inspection, at such system's main office in the community where the transmission is made or in the nearest community where such system maintains an office; and

(F) the nonsimultaneous transmission is one that the cable system would be authorized to transmit under the rules, regulations, and authorizations of the Federal Communications Commission in effect at the time of the nonsimultaneous transmission if the transmission had been made simultaneously, except that this subclause shall not apply to inadvertent or accidental transmissions.

(2) If a cable system transfers to any person a videotape of a program nonsimultaneously transmitted by it, such transfer is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, except that, pursuant to a written, nonprofit contract providing for the equitable sharing of the costs of such videotape and its transfer, a videotape nonsimultaneously transmitted by it, in accordance with clause (1), may be transferred by one cable system in Alaska to another system in Alaska, by one cable system in Hawaii permitted to make such nonsimultaneous transmissions to another such cable system in Hawaii, or by one cable system in Guam, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands, to another cable system in any of those three territories, if —

(A) each such contract is available for public inspection in the offices of the cable systems involved, and a copy of such contract is filed, within thirty days after such contract is entered into, with the Copyright Office (which Office shall make each such contract available for public inspection); and

(B) the cable system to which the videotape is transferred complies with clause (1) (A), (B), (C) (i), (iii), and (iv), and (D) through (F); and

(C) such system provides a copy of the affidavit required to be made in accordance with clause (1) (D) to each cable system making a previous nonsimultaneous transmission of the same videotape.

(3) This subsection shall not be construed to supersede the exclusivity protection provisions of any existing agreement, or any

such agreement hereafter entered into, between a cable system and a television broadcast station in the area in which the cable system is located, or a network with which such station is affiliated.

(4) As used in this subsection, the term "videotape", and each of its variant forms, means the reproduction of the images and sounds of a program or programs broadcast by a television broadcast station licensed by the Federal Communications Commission, regardless of the nature of the material objects, such as tapes or films, in which the reproduction is embodied.

(f) *Definitions* — As used in this section, the following terms and their variant forms mean the following:

A "primary transmission" is a transmission made to the public by the transmitting facility whose signals are being received and further transmitted by the secondary transmission service, regardless of where or when the performance or display was first transmitted.

A "secondary transmission" is the further transmitting of a primary transmission simultaneously with the primary transmission, or nonsimultaneously with the primary transmission if by a "cable system" not located in whole or in part within the boundary of the forty-eight contiguous States, Hawaii, or Puerto Rico: *Provided, however,* That a nonsimultaneous further transmission by a cable system located in Hawaii of a primary transmission shall be deemed to be a secondary transmission if the carriage of the television broadcast signal comprising such further transmission is permissible under the rules, regulations, or authorizations of the Federal Communications Commission.

A "cable system" is a facility, located in any State, Territory, Trust Territory, or Possession, that in whole or in part receives signals transmitted or programs broadcast by one or more television broadcast stations licensed by the Federal Communications Commission, and makes secondary transmissions of such signals or programs by wires, cables, or other communications channels to subscribing members of the public who pay for such service. For purposes of determining the royalty fee under subsection (d) (2), two or more cable systems in contiguous communities under common ownership or control or operating from one head-end shall be considered as one system.

The "local service area of a primary transmitter", in the case of a television broadcast station, comprises the area in which such

station is entitled to insist upon its signal being retransmitted by a cable system pursuant to the rules, regulations, and authorizations of the Federal Communications Commission in effect on April 15, 1976, or in the case of a television broadcast station licensed by an appropriate governmental authority of Canada or Mexico, the area in which it would be entitled to insist upon its signal being retransmitted if it were a television broadcast station subject to such rules, regulations, and authorizations. The "local service area of a primary transmitter", in the case of a radio broadcast station, comprises the primary service area of such station, pursuant to the rules and regulations of the Federal Communications Commission.

A "distant signal equivalent" is the value assigned to the secondary transmission of any nonnetwork television programing carried by a cable system in whole or in part beyond the local service area of the primary transmitter of such programing. It is computed by assigning a value of one to each independent station and a value of one-quarter to each network station and noncommercial educational station for the nonnetwork programing so carried pursuant to the rules, regulations, and authorizations of the Federal Communications Commission. The foregoing values for independent, network, and noncommercial educational stations are subject, however, to the following exceptions and limitations. Where the rules and regulations of the Federal Communications Commission require a cable system to omit the further transmission of a particular program and such rules and regulations also permit the substitution of another program embodying a performance or display of a work in place of the omitted transmission, or where such rules and regulations in effect on the date of enactment of this Act permit a cable system, at its election, to effect such deletion and substitution of a nonlive program or to carry additional programs not transmitted by primary transmitters within whose local service area the cable system is located, no value shall be assigned for the substituted or additional program; where the rules, regulations, or authorizations of the Federal Communications Commission in effect on the date of enactment of this Act permit a cable system, at its election, to omit the further transmission of a particular program and such rules, regulations, or authorizations also permit the substitution of another program embodying a performance or display of a work in place of the omitted transmission, the value assigned for the substituted or additional program

shall be, in the case of a live program, the value of one full distant signal equivalent multiplied by a fraction that has as its numerator the number of days in the year in which such substitution occurs and as its denominator the number of days in the year. In the case of a station carried pursuant to the late-night or specialty programming rules of the Federal Communications Commission, or a station carried on a part-time basis where full-time carriage is not possible because the cable system lacks the activated channel capacity to retransmit on a full-time basis all signals which it is authorized to carry, the values for independent, network, and noncommercial educational stations set forth above, as the case may be, shall be multiplied by a fraction which is equal to the ratio of the broadcast hours of such station carried by the cable system to the total broadcast hours of the station.

A "network station" is a television broadcast station that is owned or operated by, or affiliated with, one or more of the television networks in the United States providing nationwide transmissions, and that transmits a substantial part of the programming supplied by such networks for a substantial part of that station's typical broadcast day.

An "independent station" is a commercial television broadcast station other than a network station.

A "noncommercial educational station" is a television station that is a noncommercial educational broadcast station as defined in section 397 of title 47.

§ 112. Limitations on exclusive rights: Ephemeral recordings

(a) Notwithstanding the provisions of section 106, and except in the case of a motion picture or other audiovisual work, it is not an infringement of copyright for a transmitting organization entitled to transmit to the public a performance or display of a work, under a license or transfer of the copyright or under the limitations on exclusive rights in sound recordings specified by section 114 (a), to make no more than one copy or phonorecord of a particular transmission program embodying the performance or display, if —

(1) the copy or phonorecord is retained and used solely by the transmitting organization that made it, and no further copies or phonorecords are reproduced from it; and

(2) the copy or phonorecord is used solely for the transmitting

organization's own transmissions within its local service area, or for purposes of archival preservation or security; and

(3) unless preserved exclusively for archival purposes, the copy or phonorecord is destroyed within six months from the date the transmission program was first transmitted to the public.

(b) Notwithstanding the provisions of section 106, it is not an infringement of copyright for a governmental body or other nonprofit organization entitled to transmit a performance or display of a work, under section 110(2) or under the limitations on exclusive rights in sound recordings specified by section 114(a), to make no more than thirty copies or phonorecords of a particular transmission program embodying the performance or display, if —

(1) no further copies or phonorecords are reproduced from the copies or phonorecords made under this clause; and

(2) except for one copy or phonorecord that may be preserved exclusively for archival purposes, the copies or phonorecords are destroyed within seven years from the date the transmission program was first transmitted to the public.

(c) Notwithstanding the provisions of section 106, it is not an infringement of copyright for a governmental body or other nonprofit organization to make for distribution no more than one copy or phonorecord, for each transmitting organization specified in clause (2) of this subsection, of a particular transmission program embodying a performance of a nondramatic musical work of a religious nature, or of a sound recording of such a musical work, if —

(1) there is no direct or indirect charge for making or distributing any such copies or phonorecords; and

(2) none of such copies or phonorecords is used for any performance other than a single transmission to the public by a transmitting organization entitled to transmit to the public a performance of the work under a license or transfer of the copyright; and

(3) except for one copy or phonorecord that may be preserved exclusively for archival purposes, the copies or phonorecords are all destroyed within one year from the date the transmission program was first transmitted to the public.

(d) Notwithstanding the provisions of section 106, it is not an infringement of copyright for a governmental body or other nonprofit organization entitled to transmit a performance of a work under section 110(8) to make no more than ten copies or phonorecords

embodying the performance, or to permit the use of any such copy or phonorecord by any governmental body or nonprofit organization entitled to transmit a performance of a work under section 110(8), if —

(1) any such copy or phonorecord is retained and used solely by the organization that made it, or by a governmental body or nonprofit organization entitled to transmit a performance of a work under section 110(8), and no further copies or phonorecords are reproduced from it; and

(2) any such copy or phonorecord is used solely for transmissions authorized under section 110(8), or for purposes of archival preservation or security; and

(3) the governmental body or nonprofit organization permitting any use of any such copy or phonorecord by any governmental body or nonprofit organization under this subsection does not make any charge for such use.

(e) The transmission program embodied in a copy or phonorecord made under this section is not subject to protection as a derivative work under this title except with the express consent of the owners of copyright in the preexisting works employed in the program.

§ 113. Scope of exclusive rights in pictorial, graphic, and sculptural works

(a) Subject to the provisions of subsections (b) and (c) of this section, the exclusive right to reproduce a copyrighted pictorial, graphic, or sculptural work in copies under section 106 includes the right to reproduce the work in or on any kind of article, whether useful or otherwise.

(b) This title does not afford, to the owner of copyright in a work that portrays a useful article as such, any greater or lesser rights with respect to the making, distribution, or display of the useful article so portrayed than those afforded to such works under the law, whether title 17 or the common law or statutes of a State, in effect on December 31, 1977, as held applicable and construed by a court in an action brought under this title.

(c) In the case of a work lawfully reproduced in useful articles that have been offered for sale or other distribution to the public, copyright does not include any right to prevent the making, distribution, or display of pictures or photographs of such articles in connection with advertisements or commentaries related to the

distribution or display of such articles, or in connection with news reports.

§ 114. Scope of exclusive rights in sound recordings

(a) The exclusive rights of the owner of copyright in a sound recording are limited to the rights specified by clauses (1), (2), and (3) of section 106, and do not include any right of performance under section 106(4).

(b) The exclusive right of the owner of copyright in a sound recording under clause (1) of section 106 is limited to the right to duplicate the sound recording in the form of phonorecords, or of copies of motion pictures and other audiovisual works, that directly or indirectly recapture the actual sounds fixed in the recording. The exclusive right of the owner of copyright in a sound recording under clause (2) of section 106 is limited to the right to prepare a derivative work in which the actual sounds fixed in the sound recording are rearranged, remixed, or otherwise altered in sequence or quality. The exclusive rights of the owner of copyright in a sound recording under clauses (1) and (2) of section 106 do not extend to the making or duplication of another sound recording that consists entirely of an independent fixation of other sounds, even though such sounds imitate or simulate those in the copyrighted sound recording. The exclusive rights of the owner of copyright in a sound recording under clauses (1), (2), and (3) of section 106 do not apply to sound recordings included in educational television and radio programs (as defined in section 397 of title 47) distributed or transmitted by or through public broadcasting entities (as defined by section 118(g)): *Provided*, That copies or phonorecords of said programs are not commercially distributed by or through public broadcasting entities to the general public.

(c) This section does not limit or impair the exclusive right to perform publicly, by means of a phonorecord, any of the works specified by section 106(4).

(d) On January 3, 1978, the Register of Copyrights, after consulting with representatives of owners of copyrighted materials, representatives of the broadcasting, recording, motion picture, entertainment industries, and arts organizations, representatives of organized labor and performers of copyrighted materials, shall submit to the Congress a report setting forth recommendations as to whether this section should be amended to provide for performers and copyright owners

of copyrighted material any performance rights in such material. The report should describe the status of such rights in foreign countries, the views of major interested parties, and specific legislative or other recommendations, if any.

§ 115. Scope of exclusive rights in nondramatic musical works: Compulsory license for making and distributing phonorecords

In the case of nondramatic musical works, the exclusive rights provided by clauses (1) and (3) of section 106, to make and to distribute phonorecords of such works, are subject to compulsory licensing under the conditions specified by this section.

(a) *Availability and Scope of Compulsory License* —

(1) When phonorecords of a nondramatic musical work have been distributed to the public in the United States under the authority of the copyright owner, any other person may, by complying with the provisions of this section, obtain a compulsory license to make and distribute phonorecords of the work. A person may obtain a compulsory license only if his or her primary purpose in making phonorecords is to distribute them to the public for private use. A person may not obtain a compulsory license for use of the work in the making of phonorecords duplicating a sound recording fixed by another, unless: (i) such sound recording was fixed lawfully; and (ii) the making of the phonorecords was authorized by the owner of copyright in the sound recording or, if the sound recording was fixed before February 15, 1972, by any person who fixed the sound recording pursuant to an express license from the owner of the copyright in the musical work or pursuant to a valid compulsory license for use of such work in a sound recording.

(2) A compulsory license includes the privilege of making a musical arrangement of the work to the extent necessary to conform it to the style or manner of interpretation of the performance involved, but the arrangement shall not change the basic melody or fundamental character of the work, and shall not be subject to protection as a derivative work under this title, except with the express consent of the copyright owner.

(b) *Notice of Intention to Obtain Compulsory License* —

(1) Any person who wishes to obtain a compulsory license under this section shall, before or within thirty days after making, and

before distributing any phonorecords of the work, serve notice of intention to do so on the copyright owner. If the registration or other public records of the Copyright Office do not identify the copyright owner and include an address at which notice can be served, it shall be sufficient to file the notice of intention in the Copyright Office. The notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation.

(2) Failure to serve or file the notice required by clause (1) forecloses the possibility of a compulsory license and, in the absence of a negotiated license, renders the making and distribution of phonorecords actionable as acts of infringement under section 501 and fully subject to the remedies provided by sections 502 through 506 and 509.

(c) *Royalty Payable Under Compulsory License* —

(1) To be entitled to receive royalties under a compulsory license, the copyright owner must be identified in the registration or other public records of the Copyright Office. The owner is entitled to royalties for phonorecords made and distributed after being so identified, but is not entitled to recover for any phonorecords previously made and distributed.

(2) Except as provided by clause (1), the royalty under a compulsory license shall be payable for every phonorecord made and distributed in accordance with the license. For this purpose, a phonorecord is considered "distributed" if the person exercising the compulsory license has voluntarily and permanently parted with its possession. With respect to each work embodied in the phonorecord, the royalty shall be either two and three-fourths cents, or one-half of one cent per minute of playing time or fraction thereof, whichever amount is larger.

(3) A compulsory license under this section includes the right of the maker of a phonorecord of a nondramatic musical work under subsection (a)(1) to distribute or authorize distribution of such phonorecord by rental, lease, or lending. In addition to any royalty payable under clause (2) and chapter 8 of this title, a royalty shall be payable by the compulsory licensee for every act of distribution of a phonorecord by or in the nature of rental, lease, or lending, by or under the authority of the compulsory licensee. With respect to each nondramatic musical work embodied in the phonorecord, the royalty shall be a proportion of the revenue received by the

compulsory licensee from every such act of distribution of the phonorecord under this clause equal to the proportion of the revenue received by the compulsory licensee from distribution of the phonorecord under clause (2) that is payable by a compulsory licensee under that clause and under chapter 8. The Register of Copyrights shall issue regulations to carry out the purpose of this clause. (Added October 4, 1984, Public Law 98-450, sec. 3, 98 Stat. 1727.)

(4) Royalty payments shall be made on or before the twentieth day of each month and shall include all royalties for the month next preceding. Each monthly payment shall be made under oath and shall comply with requirements that the Register of Copyrights shall prescribe by regulation. The Register shall also prescribe regulations under which detailed cumulative annual statements of account, certified by a certified public accountant, shall be filed for every compulsory license under this section. The regulations covering both the monthly and the annual statements of account shall prescribe the form, content, and manner of certification with respect to the number of records made and the number of records distributed. (Amended October 4, 1984, Public Law 98-450, sec. 3, 98 Stat. 1727.)

(5) If the copyright owner does not receive the monthly payment and the monthly and annual statements of account when due, the owner may give written notice to the licensee that, unless the default is remedied within thirty days from the date of the notice, the compulsory license will be automatically terminated. Such termination renders either the making or the distribution, or both, of all phonorecords for which the royalty has not been paid, actionable as acts of infringement under section 501 and fully subject to the remedies provided by sections 502 through 506 and 509. (Amended October 4, 1984, Public Law 98-450, sec. 3, 98 Stat. 1727.)

§ 116. Scope of exclusive rights in nondramatic musical works: Public performances by means of coin-operated phonorecord players

(a) *Limitation on Exclusive Right* — In the case of a nondramatic musical work embodied in a phonorecord, the exclusive right under clause (4) of section 106 to perform the work publicly by means of a coin-operated phonorecord player is limited as follows:

(1) The proprietor of the establishment in which the public performance takes place is not liable for infringement with respect to such public performance unless —

(A) such proprietor is the operator of the phonorecord player; or

(B) such proprietor refuses or fails, within one month after receipt by registered or certified mail of a request, at a time during which the certificate required by clause (1)(C) of subsection (b) is not affixed to the phonorecord player, by the copyright owner, to make full disclosure, by registered or certified mail, of the identity of the operator of the phonorecord player.

(2) The operator of the coin-operated phonorecord player may obtain a compulsory license to perform the work publicly on that phonorecord player by filing the application, affixing the certificate, and paying the royalties provided by subsection (b).

(b) *Recordation of Coin-Operated Phonorecord Player, Affixation of Certificate, and Royalty Payable Under Compulsory License* —

(1) Any operator who wishes to obtain a compulsory license for the public performance of works on a coin-operated phonorecord player shall fulfill the following requirements:

(A) Before or within one month after such performances are made available on a particular phonorecord player, and during the month of January in each succeeding year that such performances are made available on that particular phonorecord player, the operator shall file in the Copyright Office, in accordance with requirements that the Register of Copyrights, after consultation with the Copyright Royalty Tribunal (if and when the Tribunal has been constituted), shall prescribe by regulation, an application containing the name and address of the operator of the phonorecord player and the manufacturer and serial number or other explicit identification of the phonorecord player, and deposit with the Register of Copyrights a royalty fee for the current calendar year of $8 for that particular phonorecord player. If such performances are made available on a particular phonorecord player for the first time after July 1 of any year, the royalty fee to be deposited for the remainder of that year shall be $4.

(B) Within twenty days of receipt of an application and a royalty fee pursuant to subclause (A), the Register of Copyrights

shall issue to the applicant a certificate for the phonorecord player.

(C) On or before March 1 of the year in which the certificate prescribed by subclause (B) of this clause is issued, or within ten days after the date issue of the certificate, the operator shall affix to the particular phonorecord player, in a position where it can be readily examined by the public, the certificate, issued by the Register of Copyrights under subclause (B), of the latest application made by such operator under subclause (A) of this clause with respect to that phonorecord player.

(2) Failure to file the application, to affix the certificate, or to pay the royalty required by clause (1) of this subsection renders the public performance actionable as an act of infringement under section 501 and fully subject to the remedies provided by sections 502 through 506 and 509.

(c) *Distribution of Royalties* —

(1) The Register of Copyrights shall receive all fees deposited under this section and, after deducting the reasonable costs incurred by the Copyright Office under this section, shall deposit the balance in the Treasury of the United States, in such manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest-bearing United States securities for later distribution with interest by the Copyright Royalty Tribunal as provided by this title. The Register shall submit to the Copyright Royalty Tribunal, on an annual basis, a detailed statement of account covering all fees received for the relevant period provided by subsection (b).

(2) During the month of January in each year, every person claiming to be entitled to compulsory license fees under this section for performances during the preceding twelve-month period shall file a claim with the Copyright Royalty Tribunal, in accordance with requirements that the Tribunal shall prescribe by regulation. Such claim shall include an agreement to accept as final, except as provided in section 810 of this title, the determination of the Copyright Royalty Tribunal in any controversy concerning the distribution of royalty fees deposited under subclause (A) of subsection (b) (1) of this section to which the claimant is a party. Notwithstanding any provisions of the antitrust laws, for purposes of this subsection any claimants may agree among themselves as to the proportionate division of compulsory licensing fees among

them, may lump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf.

(3) After the first day of October of each year, the Copyright Royalty Tribunal shall determine whether there exists a controversy concerning the distribution of royalty fees deposited under subclause (A) of subsection (b) (1). If the Tribunal determines that no such controversy exists, it shall, after deducting its reasonable administrative costs under this section, distribute such fees to the copyright owners entitled, or to their designated agents. If it finds that such a controversy exists, it shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty fees.

(4) The fees to be distributed shall be divided as follows:

(A) to every copyright owner not affiliated with a performing rights society, the pro rata share of the fees to be distributed to which such copyright owner proves entitlement.

(B) to the performing rights societies, the remainder of the fees to be distributed in such pro rata shares as they shall by agreement stipulate among themselves, or, if they fail to agree, the pro rata share to which such performing rights societies prove entitlement.

(C) during the pendency of any proceeding under this section, the Copyright Royalty Tribunal shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have discretion to proceed to distribute any amounts that are not in controversy.

(5) The Copyright Royalty Tribunal shall promulgate regulations under which persons who can reasonably be expected to have claims may, during the year in which performances take place, without expense to or harassment of operators or proprietors of establishments in which phonorecord players are located, have such access to such establishments and to the phonorecord players located therein and such opportunity to obtain information with respect thereto as may be reasonably necessary to determine, by sampling procedures or otherwise, the proportion of contribution of the musical works of each such person to the earnings of the phonorecord players for which fees shall have been deposited. Any person who alleges that he or she has been denied the access permitted under the regulations prescribed by the Copyright Royal-

ty Tribunal may bring an action in the United States District Court for the District of Columbia for the cancellation of the compulsory license of the phonorecord player to which such access has been denied, and the court shall have the power to declare the compulsory license thereof invalid from the date of issue thereof.

(d) *Criminal Penalties* — Any person who knowingly makes a false representation of a material fact in an application filed under clause (1) (A) of subsection (b), or who knowingly alters a certificate issued under clause (1) (B) of subsection (b) or knowingly affixes such a certificate to a phonorecord player other than the one it covers, shall be fined not more than $2,500.

(e) *Definitions* — As used in this section, the following terms and their variant forms mean the following:

(1) A "coin-operated phonorecord player" is a machine or device that —

(A) is employed solely for the performance of nondramatic musical works by means of phonorecords upon being activated by insertion of coins, currency, tokens, or other monetary units or their equivalent;

(B) is located in an establishment making no direct or indirect charge for admission;

(C) is accompanied by a list of the titles of all the musical works available for performance on it, which list is affixed to the phonorecord player or posted in the establishment in a prominent position where it can be readily examined by the public; and

(D) affords a choice of works available for performance and permits the choice to be made by the patrons of the establishment in which it is located.

(2) An "operator" is any person who, alone or jointly with others:

(A) owns a coin-operated phonorecord player; or

(B) has the power to make a coin-operated phonorecord player available for placement in an establishment for purposes of public performance; or

(C) has the power to exercise primary control over the selection of the musical works made available for public performance on a coin-operated phonorecord player.

(3) A "performing rights society" is an association or corporation that licenses the public performance of nondramatic musical works

on behalf of the copyright owners, such as the American Society of Composers, Authors and Publishers, Broadcast Music, Inc., and SESAC, Inc.

§ 117. Limitations on exclusive rights: Computer programs

Notwithstanding the provisions of section 106, it is not an infringement for the owner of a copy of a computer program to make or authorize the making of another copy or adaptation of that computer program provided:

(1) that such a new copy or adaptation is created as an essential step in the utilization of the computer program in conjunction with a machine and that it is used in no other manner, or

(2) that such new copy or adaptation is for archival purposes only and that all archival copies are destroyed in the event that continued possession of the computer program should cease to be rightful.

Any exact copies prepared in accordance with the provisions of this section may be leased, sold, or. otherwise transferred, along with the copy from which such copies were prepared, only as part of the lease, sale, or other transfer of all rights in the program. Adaptations so prepared may be transferred only with the authorization of the copyright owner. (Amended December 12, 1980, Public Law 96-517, sec. 10(b), 94 Stat. 3028.)

§ 118. Scope of exclusive rights: Use of certain works in connection with noncommercial broadcasting

(a) The exclusive rights provided by section 106 shall, with respect to the works specified by subsection (b) and the activities specified by subsection (d), be subject to the conditions and limitations prescribed by this section.

(b) Not later than thirty days after the Copyright Royalty Tribunal has been constituted in accordance with section 802, the Chairman of the Tribunal shall cause notice to be published in the Federal Register of the initiation of proceedings for the purpose of determining reasonable terms and rates of royalty payments for the activities specified by subsection (d) with respect to published nondramatic musical works and published pictorial, graphic, and sculptural work during a period beginning as provided in clause (3) of this subsection

and ending on December 31, 1982. Copyright owners and public broadcasting entities shall negotiate in good faith and cooperate fully with the Tribunal in an effort to reach reasonable and expeditious results. Notwithstanding any provision of the antitrust laws, any owners of copyright in works specified by this subsection and any public broadcasting entities, respectively, may negotiate and agree upon the terms and rates of royalty payments and the proportionate division of fees paid among various copyright owners, and may designate common agents to negotiate, agree to, pay, or receive payments.

(1) Any owner of copyright in a work specified in this subsection or any public broadcasting entity may, within one hundred and twenty days after publication of the notice specified in this subsection, submit to the Copyright Royalty Tribunal proposed licenses covering such activities with respect to such works. The Copyright Royalty Tribunal shall proceed on the basis of the proposals submitted to it as well as any other relevant information. The Copyright Royalty Tribunal shall permit any interested party to submit information relevant to such proceedings.

(2) License agreements voluntarily negotiated at any time between one or more copyright owners and one or more public broadcasting entities shall be given effect in lieu of any determination by the Tribunal: *Provided,* That copies of such agreements are filed in the Copyright Office within thirty days of execution in accordance with regulations that the Register of Copyrights shall prescribe.

(3) Within six months, but not earlier than one hundred and twenty days, from the date of publication of the notice specified in this subsection the Copyright Royalty Tribunal shall make a determination and publish in the Federal Register a schedule of rates and terms which, subject to clause (2) of this subsection, shall be binding on all owners of copyright in works specified by this subsection and public broadcasting entities, regardless of whether or not such copyright owners and public broadcasting entities have submitted proposals to the Tribunal. In establishing such rates and terms the Copyright Royalty Tribunal may consider the rates for comparable circumstances under voluntary license agreements negotiated as provided in clause (2) of this subsection. The Copyright Royalty Tribunal shall also establish requirements by which copyright owners may receive reasonable notice of the use of their

works under this section, and under which records of such use shall be kept by public broadcasting entities.

(4) With respect to the period beginning on the effective date of this title and ending on the date of publication of such rates and terms, this title shall not afford to owners of copyright or public broadcasting entities any greater or lesser rights with respect to the activities specified in subsection (d) as applied to works specified in this subsection than those afforded under the law in effect on December 31, 1977, as held applicable. and construed by a court in an action brought under this title.

(c) The initial procedure specified in subsection (b) shall be repeated and concluded between June 30 and December 31, 1982, and at five-year intervals thereafter, in accordance with regulations that the Copyright Royalty Tribunal shall prescribe.

(d) Subject to the transitional provisions of subsection (b) (4), and to the terms of any voluntary license agreements that have been negotiated as provided by subsection (b) (2), a public broadcasting entity may, upon compliance with the provisions of this section, including the rates and terms established by the Copyright Royalty Tribunal under subsection (b) (3), engage in the following activities with respect to published nondramatic musical works and published pictorial, graphic, and sculptural works:

(1) performance or display of a work by or in the course of a transmission made by a noncommercial educational broadcast station referred to in subsection (g); and

(2) production of a transmission program, reproduction of copies or phonorecords of such a transmission program, and distribution of such copies or phonorecords, where such production, reproduction, or distribution is made by a nonprofit institution or organization solely for the purpose of transmissions specified in clause (1); and

(3) the making of reproductions by a governmental body or a nonprofit institution of a transmission program simultaneously with its transmission as specified in clause (1), and the performance or display of the contents of such program under the conditions specified by clause (1) of section 110, but only if the reproductions are used for performances or displays for a period of no more than seven days from the date of the transmission specified in clause (1), and are destroyed before or at the end of such period. No person supplying, in accordance with clause (2), a reproduction of a

transmission program to governmental bodies or nonprofit institutions under this clause shall have any liability as a result of failure of such body or institution to destroy such reproduction: *Provided,* That it shall have notified such body or institution of the requirement for such destruction pursuant to this clause: *And provided further,* That if such body or institution itself fails to destroy such reproduction it shall be deemed to have infringed.

(e) Except as expressly provided in this subsection, this section shall have no applicability to works other than those specified in subsection (b).

(1) Owners of copyright in nondramatic literary works and public broadcasting entities may, during the course of voluntary negotiations, agree among themselves, respectively, as to the terms and rates of royalty payments without liability under the antitrust laws. Any such terms and rates of royalty payments shall be effective upon filing in the Copyright Office, in accordance with regulations that the Register of Copyrights shall prescribe.

(2) On January 3, 1980, the Register of Copyrights, after consulting with authors and other owners of copyright in nondramatic literary works and their representatives, and with public broadcasting entities and their representatives, shall submit to the Congress a report setting forth the extent to which voluntary licensing arrangements have been reached with respect to the use of nondramatic literary works by such broadcast stations. The report should also describe any problems that may have arisen, and present legislative or other recommendations, if warranted.

(f) Nothing in this section shall be construed to permit, beyond the limits of fair use as provided by section 107, the unauthorized dramatization of a nondramatic musical work, the production of a transmission program drawn to any substantial extent from a published compilation of pictorial, graphic, or sculptural works, or the unauthorized use of any portion of an audiovisual work.

(g) As used in this section, the term "public broadcasting entity" means a noncommercial educational broadcast station as defined in section 397 of title 47 and any nonprofit institution or organization engaged in the activities described in clause (2) of subsection (d).

CHAPTER 2 — COPYRIGHT OWNERSHIP AND TRANSFER

SEC.

201. Ownership of copyright.
202. Ownership of copyright as distinct from ownership of material object.

203. Termination of transfers and licenses granted by the author.
204. Execution of transfers of copyright ownership.
205. Recordation of transfers and other documents.

§ 201. Ownership of copyright

(a) *Initial Ownership* — Copyright in a work protected under this title vests initially in the author or authors of the work. The authors of a joint work are coowners of copyright in the work.

(b) *Work Made for Hire* — In the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author for purposes of this title, and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright.

(c) *Contributions to Collective Works* — Copyright in each separate contribution to a collective work is distinct from copyright in the collective work as a whole, and vests initially in the author of the contribution. In the absence of an express transfer of the copyright or of any rights under it, the owner of copyright in the collective work is presumed to have acquired only the privilege of reproducing and distributing the contribution as part of that particular collective work, any revision of that collective work, and any later collective work in the same series.

(d) *Transfer of Ownership* —

(1) The ownership of a copyright may be transferred in whole or in part by any means of conveyance or by operation of law, and may be bequeathed by will or pass as personal property by the applicable laws of intestate succession.

(2) Any of the exclusive rights comprised in a copyright, including any subdivision of any of the rights specified by section 106, may be transferred as provided by clause (1) and owned separately. The owner of any particular exclusive right is entitled, to the extent of that right, to all of the protection and remedies accorded to the copyright owner by this title.

(e) *Involuntary Transfer* — When an individual author's ownership of a copyright, or of any of the exclusive rights under a copyright, has not previously been transferred voluntarily by that individual author, no action by any governmental body or other official or organization purporting to seize, expropriate, transfer, or exercise rights of ownership with respect to the copyright, or any of the exclusive rights under a copyright, shall be given effect under this title, except as provided

under title 11. (Amended November 6, 1978, Public Law 95-598, sec. 313, 92 Stat. 2676.)

§ 202. Ownership of copyright as distinct from ownership of material object

Ownership of a copyright, or of any of the exclusive rights under a copyright, is distinct from ownership of any material object in which the work is embodied. Transfer of ownership of any material object, including the copy or phonorecord in which the work is first fixed, does not of itself convey any rights in the copyrighted work embodied in the object; nor, in the absence of an agreement, does transfer of ownership of a copyright or of any exclusive rights under a copyright convey property rights in any material object.

§ 203. Termination of transfers and licenses granted by the author

(a) *Conditions for Termination* — In the case of any work other than a work made for hire, the exclusive or nonexclusive grant of a transfer or license of copyright or of any right under a copyright, executed by the author on or after January 1, 1978, otherwise than by will, is subject to termination under the following conditions:

(1) In the case of a grant executed by one author, termination of the grant may be effected by that author or, if the author is dead, by the person or persons who, under clause (2) of this subsection, own and are entitled to exercise a total of more than one-half of that author's termination interest. In the case of a grant executed by two or more authors of a joint work, termination of the grant may be effected by a majority of the authors who executed it; if any of such authors is dead, the termination interest of any such author may be exercised as a unit by the person or persons who, under clause (2) of this subsection, own and are entitled to exercise a total of more than one-half of that author's interest.

(2) Where an author is dead, his or her termination interest is owned, and may be exercised, by his widow or her widower and his or her children or grandchildren as follows:

(A) the widow or widower owns the author's entire termination interest unless there are any surviving children or grandchildren of the author, in which case the widow or widower owns one-half of the author's interest;

(B) the author's surviving children, and the surviving children of any dead child of the author, own the author's entire

termination interest unless there is a widow or widower, in which case the ownership of one-half of the author's interest is divided among them;

(C) the rights of the author's children and grandchildren are in all cases divided among them and exercised on a per stirpes basis according to the number of such author's children represented; the share of the children of a dead child in a termination interest can be exercised only by the action of a majority of them.

(3) Termination of the grant may be effected at any time during a period of five years beginning at the end of thirty-five years from the date of execution of the grant; or, if the grant covers the right of publication of the work, the period begins at the end of thirty-five years from the date of publication of the work under the grant or at the end of forty years from the date of execution of the grant, whichever term ends earlier.

(4) The termination shall be effected by serving an advance notice in writing, signed by the number and proportion of owners of termination interests required under clauses (1) and (2) of this subsection, or by their duly authorized agents, upon the grantee or the grantee's successor in title.

(A) The notice shall state the effective date of the termination, which shall fall within the five-year period specified by clause (3) of this subsection, and the notice shall be served not less than two or more than ten years before that date. A copy of the notice shall be recorded in the Copyright Office before the effective date of termination, as a condition to its taking effect.

(B) The notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation.

(5) Termination of the grant may be effected notwithstanding any agreement to the contrary, including an agreement to make a will or to make any future grant.

(b) *Effect of Termination* — Upon the effective date of termination, all rights under this title that were covered by the terminated grants revert to the author, authors, and other persons owning termination interests under clauses (1) and (2) of subsection (a), including those owners who did not join in signing the notice of termination under clause (4) of subsection (a), but with the following limitations:

(1) A derivative work prepared under authority of the grant before its termination may continue to be utilized under the terms

of the grant after its termination, but this privilege does not extend to the preparation after the termination of other derivative works based upon the copyrighted work covered by the terminated grant.

(2) The future rights that will revert upon termination of the grant become vested on the date the notice of termination has been served as provided by clause (4) of subsection (a). The rights vest in the author, authors, and other persons named in, and in the proportionate shares provided by, clauses (1) and (2) of subsection (a).

(3) Subject to the provisions of clause (4) of this subsection, a further grant, or agreement to make a further grant, of any right covered by a terminated grant is valid only if it is signed by the same number and proportion of the owners, in whom the right has vested under clause (2) of this subsection, as are required to terminate the grant under clauses (1) and (2) of subsection (a). Such further grant or agreement is effective with respect to all of the persons in whom the right it covers has vested under clause (2) of this subsection, including those who did not join in signing it. If any person dies after rights under a terminated grant have vested in him or her, that person's legal representatives, legatees, or heirs at law represent him or her for purposes of this clause.

(4) A further grant, or agreement to make a further grant, of any right covered by a terminated grant is valid only if it is made after the effective date of the termination. As an exception, however, an agreement for such a further grant may be made between the persons provided by clause (3) of this subsection and the original grantee or such grantee's successor in title, after the notice of termination has been served as provided by clause (4) of subsection (a).

(5) Termination of a grant under this section affects only those rights covered by the grants that arise under this title, and in no way affects rights arising under any other Federal, State, or foreign laws.

(6) Unless and until termination is effected under this section, the grant, if it does not provide otherwise, continues in effect for the term of copyright provided by this title.

§ 204. Execution of transfers of copyright ownership

(a) A transfer of copyright ownership, other than by operation of law, is not valid unless an instrument of conveyance, or a note or

memorandum of the transfer, is in writing and signed by the owner of the rights conveyed or such owner's duly authorized agent.

(b) A certificate of acknowledgement is not required for the validity of a transfer, but is prima facie evidence of the execution of the transfer if —

(1) in the case of a transfer executed in the United States, the certificate is issued by a person authorized to administer oaths within the United States; or

(2) in the case of a transfer executed in a foreign country, the certificate is issued by a diplomatic or consular officer of the United States, or by a person authorized to administer oaths whose authority is proved by a certificate of such an officer.

§ 205. Recordation of transfers and other documents

(a) *Conditions for Recordation* — Any transfer of copyright ownership or other document pertaining to a copyright may be recorded in the Copyright Office if the document filed for recordation bears the actual signature of the person who executed it, or if it is accompanied by a sworn or official certification that it is a true copy of the original, signed document.

(b) *Certificate of Recordation* — The Register of Copyrights shall, upon receipt of a document as provided by subsection (a) and of the fee provided by section 708, record the document and return it with a certificate of recordation.

(c) *Recordation as Constructive Notice* — Recordation of a document in the Copyright Office gives all persons constructive notice of the facts stated in the recorded document, but only if —

(1) the document, or material attached to it, specifically identifies the work to which it pertains so that, after the document is indexed by the Register of Copyrights, it would be revealed by a reasonable search under the title or registration number of the work; and

(2) registration has been made for the work.

(d) *Recordation as Prerequisite to Infringement Suit* — No person claiming by virtue of a transfer to be the owner of copyright or of any exclusive right under a copyright is entitled to institute an infringement action under this title until the instrument of transfer under which such person claims has been recorded in the Copyright Office, but suit may be instituted after such recordation on a cause of action that arose before recordation.

(e) *Priority Between Conflicting Transfers* — As between two conflicting transfers, the one executed first prevails if it is recorded, in the manner required to give constructive notice under subsection (c), within one month after its execution in the United States or within two months after its execution outside the United States, or at any time before recordation in such manner of the later transfer. Otherwise the later transfer prevails if recorded first in such manner, and if taken in good faith, for valuable consideration or on the basis of a binding promise to pay royalties, and without notice of the earlier transfer.

(f) *Priority Between Conflicting Transfer of Ownership and Nonexclusive License* — A nonexclusive license, whether recorded or not, prevails over a conflicting transfer of copyright ownership if the license is evidenced by a written instrument signed by the owner of the rights licensed or such owner's duly authorized agent, and if —

(1) the license was taken before execution of the transfer; or

(2) the license was taken in good faith before recordation of the transfer and without notice of it.

CHAPTER 3 — DURATION OF COPYRIGHT

SEC.

301. Preemption with respect to other laws.
302. Duration of copyright: Works created on or after January 1, 1978.
303. Duration of copyright: Works created but not published or copyrighted before January 1, 1978.
304. Duration of copyright: Subsisting copyrights.
305. Duration of copyright: Terminal date.

§ 301. Preemption with respect to other laws

(a) On and after January 1, 1978, all legal or equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106 in works of authorship that are fixed in a tangible medium of expression and come within the subject matter of copyright as specified by sections 102 and 103, whether created before or after that date and whether published or unpublished, are governed exclusively by this title. Thereafter, no person is entitled to any such right or equivalent right in any such work under the common law or statutes of any State.

(b) Nothing in this title annuls or limits any rights or remedies under the common law or statutes of any State with respect to —

(1) subject matter that does not come within the subject matter of copyright as specified by sections 102 and 103, including works of authorship not fixed in any tangible medium of expression; or

(2) any cause of action arising from undertakings commenced before January 1, 1978; or

(3) activities violating legal or equitable rights that are not equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106.

(c) With respect to sound recordings fixed before February 15, 1972, any rights or remedies under the common law or statutes of any State shall not be annulled or limited by this title until February 15, 2047. The preemptive provisions of subsection (a) shall apply to any such rights and remedies pertaining to any cause of action arising from undertakings commenced on and after February 15, 2047. Notwithstanding the provisions of section 303, no sound recording fixed before February 15, 1972, shall be subject to copyright under this title before, on, or after February 15, 2047.

(d) Nothing in this title annuls or limits any rights or remedies under any other Federal statute.

§ 302. Duration of copyright: Works created on or after January 1, 1978

(a) *In General* — Copyright in a work created on or after January 1, 1978, subsists from its creation and, except as provided by the following subsections, endures for a term consisting of the life of the author and fifty years after the author's death.

(b) *Joint Works* — In the case of a joint work prepared by two or more authors who did not work for hire, the copyright endures for a term consisting of the life of the last surviving author and fifty years after such last surviving author's death.

(c) *Anonymous Works, Pseudonymous Works, and Works Made for Hire* — In the case of an anonymous work, a pseudonymous work, or a work made for hire, the copyright endures for a term of seventy-five years from the year of its first publication, or a term of one hundred years from the year of its creation, whichever expires first. If, before the end of such term, the identity of one or more of the authors of an anonymous or pseudonymous work is revealed in the records of a registration made for that work under subsections (a) or (d) of section 408, or in the records provided by this subsection, the copyright in the

work endures for the term specified by subsection (a) or (b), based on the life of the author or authors whose identity has been revealed. Any person having an interest in the copyright in an anonymous or pseudonymous work may at any time record, in records to be maintained by the Copyright Office for that purpose, a statement identifying one or more authors of the work; the statement shall also identify the person filing it, the nature of that person's interest, the source of the information recorded, and the particular work affected, and shall comply in form and content with requirements that the Register of Copyrights shall prescribe by regulation.

(d) *Records Relating to Death of Authors* — Any person having an interest in a copyright may at any time record in the Copyright Office a statement of the date of death of the author of the copyrighted work, or a statement that the author is still living on a particular date. The statement shall identify the person filing it, the nature of that person's interest, and the source of the information recorded, and shall comply in form and content with requirements that the Register of Copyrights shall prescribe by regulation. The Register shall maintain current records of information relating to the death of authors of copyrighted works, based on such recorded statements and, to the extent the Register considers practicable, on data contained in any of the records of the Copyright Office or in other reference sources.

(e) *Presumption as to Author's Death* — After a period of seventy-five years from the year of first publication of a work, or a period of one hundred years from the year of its creation, whichever expires first, any person who obtains from the Copyright Office a certified report that the records provided by subsection (d) disclose nothing to indicate that the author of the work is living, or died less than fifty years before, is entitled to the benefit of a presumption that the author has been dead for at least fifty years. Reliance in good faith upon this presumption shall be a complete defense to any action for infringement under this title.

§ 303. Duration of copyright: Works created but not published or copyrighted before January 1, 1978

Copyright in a work created before January 1, 1978, but not theretofore in the public domain or copyrighted, subsists from January 1, 1978, and endures for the term provided by section 302. In no case, however, shall the term of copyright in such a work expire

before December 31, 2002; and, if the work is published on or before December 31, 2002, the term of copyright shall not expire before December 31, 2027.

§ 304. Duration of copyright: Subsisting copyrights

(a) *Copyrights in Their First Term on January 1, 1978* — Any copyright, the first term of which is subsisting on January 1, 1978, shall endure for twenty-eight years from the date it was originally secured: *Provided,* That in the case of any posthumous work or of any periodical, cyclopedic, or other composite work upon which the copyright was originally secured by the proprietor thereof, or of any work copyrighted by a corporate body (otherwise than as assignee or licensee of the individual author) or by an employer for whom such work is made for hire, the proprietor of such copyright shall be entitled to a renewal and extension of the copyright in such work for the further term of forty-seven years when application for such renewal and extension shall have been made to the Copyright Office and duly registered therein within one year prior to the expiration of the original term of copyright: *And provided further,* That in the case of any other copyrighted work, including a contribution by an individual author to a periodical or to a cyclopedic or other composite work, the author of such work, if still living, or the widow, widower, or children of the author, if the author be not living, or if such author, widow, widower, or children be not living, then the author's executors, or in the absence of a will, his or her next of kin shall be entitled to a renewal and extension of the copyright in such work for a further term of forty-seven years when application for such renewal and extension shall have been made to the Copyright Office and duly registered therein within one year prior to the expiration of the original term of copyright: *And provided further,* That in default of the registration of such application for renewal and extension, the copyright in any work shall terminate at the expiration of twenty-eight years from the date copyright was originally secured.

(b) *Copyrights in Their Renewal Term or Registered for Renewal Before January 1, 1978* — The duration of any copyright, the renewal term of which is subsisting at any time between December 31, 1976, and December 31, 1977, inclusive, or for which renewal registration is made between December 31, 1976, and December 31, 1977, inclusive,

is extended to endure for a term of seventy-five years from the date copyright was originally secured.

(c) *Termination of Transfer and Licenses Covering Extended Renewal Term* — In the case of any copyright subsisting in either its first or renewal term on January 1, 1978, other than a copyright in a work made for hire, the exclusive or nonexclusive grant of a transfer or license of the renewal copyright or any right under it, executed before January 1, 1978, by any of the persons designated by the second proviso of subsection (a) of this section, otherwise than by will, is subject to termination under the following conditions:

(1) In the case of a grant executed by a person or persons other than the author, termination of the grant may be effected by the surviving person or persons who executed it. In the case of a grant executed by one or more of the authors of the work, termination of the grant may be effected, to the extent of a particular author's share in the ownership of the renewal copyright, by the author who executed it or, if such author is dead, by the person or persons who, under clause (2) of this subsection, own and are entitled to exercise a total of more than one-half of that author's termination interest.

(2) Where an author is dead, his or her termination interest is owned, and may be exercised, by his widow or her widower and his or her children or grandchildren as follows:

(A) the widow or widower owns the author's entire termination interest unless there are any surviving children or grandchildren of the author, in which case the widow or widower owns one-half of the author's interest;

(B) the author's surviving children, and the surviving children of any dead child of the author, own the author's entire termination interest unless there is a widow or widower, in which case the ownership of one-half of the author's interest is divided among them;

(C) the rights of the author's children and grandchildren are in all cases divided among them and exercised on a per stirpes basis according to the number of such author's children represented; the share of the children of a dead child in a termination interest can be exercised only by the action of a majority of them.

(3) Termination of the grant may be effected at any time during

a period of five years beginning at the end of fifty-six years from the date copyright was originally secured, or beginning on January 1, 1978, whichever is later.

(4) The termination shall be effected by serving an advance notice in writing upon the grantee or the grantee's successor in title. In the case of a grant executed by a person or persons other than the author, the notice shall be signed by all of those entitled to terminate the grant under clause (1) of this subsection, or by their duly authorized agents. In the case of a grant executed by one or more of the authors of the work, the notice as to any one author's share shall be signed by that author or his or her duly authorized agent or, if that author is dead, by the number and proportion of the owners of his or her termination interest required under clauses (1) and (2) of this subsection, or by their duly authorized agents.

(A) The notice shall state the effective date of the termination, which shall fall within the five-year period specified by clause (3) of this subsection, and the notice shall be served not less than two or more than ten years before that date. A copy of the notice shall be recorded in the Copyright Office before the effective date of termination, as a condition to its taking effect.

(B) The notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation.

(5) Termination of the grant may be effected notwithstanding any agreement to the contrary, including an agreement to make a will or to make any future grant.

(6) In the case of a grant executed by a person or persons other than the author, all rights under this title that were covered by the terminated grant revert, upon the effective date of termination, to all of those entitled to terminate the grant under clause (1) of this subsection. In the case of a grant executed by one or more of the authors of the work, all of a particular author's rights under this title that were covered by the terminated grant revert, upon the effective date of termination, to the author or, if that author is dead, to the persons owning his or her termination interest under clause (2) of this subsection, including those owners who did not join in signing the notice of termination under clause (4) of this subsection. In all cases the reversion of rights is subject to the following limitations:

(A) A derivative work prepared under authority of the grant before its termination may continue to be utilized under the terms of the grant after its termination, but this privilege does not extend to the preparation after the termination of other derivative works based upon the copyrighted work covered by the terminated grant.

(B) The future rights that will revert upon termination of the grant become vested on the date the notice of termination has been served as provided by clause (4) of this subsection.

(C) Where the author's rights revert to two or more persons under clause (2) of this subsection, they shall vest in those persons in the proportionate shares provided by that clause. In such a case, and subject to the provisions of subclause (D) of this clause, a further grant, or agreement to make a further grant, of a particular author's share with respect to any right covered by a terminated grant is valid only if it is signed by the same number and proportion of the owners, in whom the right has vested under this clause, as are required to terminate the grant under clause (2) of this subsection. Such further grant or agreement is effective with respect to all of the persons in whom the right it covers has vested under this subclause, including those who did not join in signing it. If any person dies after rights under a terminated grant have vested in him or her, that person's legal representatives, legatees, or heirs at law represent him or her for purposes of this subclause.

(D) A further grant, or agreement to make a further grant, of any right covered by a terminated grant is valid only if it is made after the effective date of the termination. As an exception, however, an agreement for such a further grant may be made between the author or any of the persons provided by the first sentence of clause (6) of this subsection, or between the persons provided by subclause (C) of this clause, and the original grantee or such grantee's successor in title, after the notice of termination has been served as provided by clause (4) of this subsection.

(E) Termination of a grant under this subsection affects only those rights covered by the grant that arise under this title, and in no way affects rights arising under any other Federal, State, or foreign laws.

(F) Unless and until termination is effected under this subsec-

tion, the grant, if it does not provide otherwise, continues in effect for the remainder of the extended renewal term.

§ 305. Duration of copyright: Terminal date

All terms of copyright provided by sections 302 through 304 run to the end of the calendar year in which they would otherwise expire.

CHAPTER 4 — COPYRIGHT NOTICE, DEPOSIT, AND REGISTRATION

SEC.

401. Notice of copyright: Visually perceptible copies.
402. Notice of copyright: Phonorecords of sound recordings.
403. Notice of copyright: Publications incorporating United States Government works.
404. Notice of copyright: Contributions to collective works.
405. Notice of copyright: Omission of notice.
406. Notice of copyright: Error in name or date.
407. Deposit of copies or phonorecords for Library of Congress.
408. Copyright registration in general.
409. Application for copyright registration.
410. Registration of claim and issuance of certificate.
411. Registration as prerequisite to infringement suit.
412. Registration as prerequisite to certain remedies for infringement.

§ 401. Notice of copyright: Visually perceptible copies

(a) *General Requirement* — Whenever a work protected under this title is published in the United States or elsewhere by authority of the copyright owner, a notice of copyright as provided by this section shall be placed on all publicly distributed copies from which the work can be visually perceived, either directly or with the aid of a machine or device.

(b) *Form of Notice* — The notice appearing on the copies shall consist of the following three elements:

(1) the symbol © (the letter C in a circle), or the word "Copyright", or the abbreviation "Copr."; and

(2) the year of first publication of the work; in the case of compilations or derivative works incorporating previously published material, the year date of first publication of the compilation or derivative work is sufficient. The year date may be omitted where a pictorial, graphic, or sculptural work, with accompanying text matter, if any, is reproduced in or on greeting cards, postcards, stationery, jewelry, dolls, toys, or any useful articles; and

(3) the name of the owner of copyright in the work, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner.

(c) *Position of Notice* — The notice shall be affixed to the copies in such manner and location as to give reasonable notice of the claim of copyright. The Register of Copyrights shall prescribe by regulation, as examples, specific methods of affixation and positions of the notice on various types of works that will satisfy this requirement, but these specifications shall not be considered exhaustive.

§ 402. Notice of copyright: phonorecords of sound recordings

(a) *General Requirement* — Whenever a sound recording protected under this title is published in the United States or elsewhere by authority of the copyright owner, a notice of copyright as provided by this section shall be placed on all publicly distributed phonorecords of the sound recording.

(b) *Form of Notice* — The notice appearing on the phonorecords shall consist of the following three elements:

(1) the symbol Ⓟ (the letter P in a circle); and

(2) the year of first publication of the sound recording; and

(3) the name of the owner of copyright in the sound recording, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner; if the producer of the sound recording is named on the phonorecord labels or containers, and if no other name appears in conjunction with the notice, the producer's name shall be considered a part of the notice.

(c) *Position of Notice* — The notice shall be placed on the surface of the phonorecord, or on the phonorecord label or container, in such manner and location as to give reasonable notice of the claim of copyright.

§ 403. Notice of copyright: Publications incorporating United States Government works

Whenever a work is published in copies or phonorecords consisting preponderantly of one or more works of the United States Government, the notice of copyright provided by sections 401 or 402 shall also include a statement identifying, either affirmatively or

negatively, those portions of the copies or phonorecords embodying any work or works protected under this title.

§ 404. Notice of copyright: Contributions to collective works

(a) A separate contribution to a collective work may bear its own notice of copyright, as provided by sections 401 through 403. However, a single notice applicable to the collective work as a whole is sufficient to satisfy the requirements of sections 401 through 403 with respect to the separate contributions it contains (not including advertisements inserted on behalf of persons other than the owner of copyright in the collective work), regardless of the ownership of copyright in the contributions and whether or not they have been previously published.

(b) Where the person named in a single notice applicable to a collective work as a whole is not the owner of copyright in a separate contribution that does not bear its own notice, the case is governed by the provisions of section 406(a).

§ 405. Notice of copyright: Omission of notice

(a) *Effect of Omission on Copyright* — The omission of the copyright notice prescribed by sections 401 through 403 from copies or phonorecords publicly distributed by authority of the copyright owner does not invalidate the copyright in a work if —

(1) the notice has been omitted from no more than a relatively small number of copies or phonorecords distributed to the public; or

(2) registration for the work has been made before or is made within five years after the publication without notice, and a reasonable effort is made to add notice to all copies or phonorecords that are distributed to the public in the United States after the omission has been discovered; or

(3) the notice has been omitted in violation of an express requirement in writing that, as a condition of the copyright owner's authorization of the public distribution of copies or phonorecords, they bear the prescribed notice.

(b) *Effect of Omission on Innocent Infringers* — Any person who innocently infringes a copyright, in reliance upon an authorized copy or phonorecord from which the copyright notice has been omitted, incurs no liability for actual or statutory damages under section 504 for any infringing acts committed before receiving actual notice that

registration for the work has been made under section 408, if such person proves that he or she was misled by the omission of notice. In a suit for infringement in such a case the court may allow or disallow recovery of any of the infringer's profits attributable to the infringement, and may enjoin the continuation of the infringing undertaking or may require, as a condition or permitting the continuation of the infringing undertaking, that the infringer pay the copyright owner a reasonable license fee in an amount and on terms fixed by the court.

(c) *Removal of Notice* — Protection under this title is not affected by the removal, destruction, or obliteration of the notice, without the authorization of the copyright owner, from any publicly distributed copies or phonorecords.

§ 406. Notice of copyright: Error in name or date

(a) *Error in Name* — Where the person named in the copyright notice on copies or phonorecords publicly distributed by authority of the copyright owner is not the owner of copyright, the validity and ownership of the copyright are not affected. In such a case, however, any person who innocently begins an undertaking that infringes the copyright has a complete defense to any action for such infringement if such person proves that he or she was misled by the notice and began the undertaking in good faith under a purported transfer or license from the person named therein, unless before the undertaking was begun —

(1) registration for the work had been made in the name of the owner of copyright; or

(2) a document executed by the person named in the notice and showing the ownership of the copyright had been recorded. The person named in the notice is liable to account to the copyright owner for all receipts from transfers or licenses purportedly made under the copyright by the person named in the notice

(b) *Error in Date* — When the year date in the notice on copies or phonorecords distributed by authority of the copyright owner is earlier than the year in which publication first occurred, any period computed from the year of first publication under section 302 is to be computed from the year in the notice. Where the year date is more than one year later than the year in which publication first occurred, the work is considered to have been published without any notice and is governed by the provisions of section 405.

(c) *Omission of Name or Date* — Where copies or phonorecords

publicly distributed by authority of the copyright owner contain no name or no date that could reasonably be considered a part of the notice, the work is considered to have been published without any notice and is governed by the provision of section 405.

§ 407. Deposit of copies or phonorecords for Library of Congress

(a) Except as provided by subsection (c), and subject to the provisions of subsection (e), the owner of copyright or of the exclusive right of publication in a work published with notice of copyright in the United States shall deposit, within three months after the date of such publication —

(1) two complete copies of the best edition; or

(2) if the work is a sound recording, two complete phonorecords of the best edition, together with any printed or other visually perceptible material published with such phonorecords.

Neither the deposit requirements of this subsection nor the acquisition provisions of subsection (e) are conditions of copyright protection.

(b) The required copies or phonorecords shall be deposited in the Copyright Office for the use or disposition of the Library of Congress. The Register of Copyright shall, when requested by the depositor and upon payment of the fee prescribed by section 708, issue a receipt for the deposit.

(c) The Register of Copyrights may by regulation exempt any categories of material from the deposit requirements of this section, or require deposit of only one copy or phonorecord with respect to any categories. Such regulations shall provide either for complete exemption from the deposit requirements of this section, or for altetnative forms of deposit aimed at providing a satisfactory archival record of a work without imposing practical or financial hardships on the depositor, where the individual author is the owner of copyright in a pictorial, graphic, or sculptural work and (i) less than five copies of the work have been published, or (ii) the work has been published in a limited edition consisting of numbered copies, the monetary value of which would make the mandatory deposit of two copies of the best edition of the work burdensome, unfair, or unreasonable.

(d) At any time after publication of a work as provided by subsection (a), the Register of Copyrights may make written demand for the required deposit on any of the persons obligated to make the