

## TITLE 35 - PATENTS

### PART I - UNITED STATES PATENT AND TRADEMARK OFFICE

#### CHAPTER 4 - PATENT FEES; FUNDING; SEARCH SYSTEMS

#### § 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 Director.

(b) All fees paid to the Director 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.

(c) To the extent and in the amounts provided in advance in appropriations Acts, fees authorized in this title or any other Act to be charged or established by the Director shall be collected by and shall be available to the Director to carry out the activities of the Patent and Trademark Office. All fees available to the Director under section 31 of the Trademark Act of 1946 shall be used only for the processing of trademark registrations and for other activities, services, and materials relating to trademarks and to cover a proportionate share of the administrative costs of the Patent and Trademark Office.

(d) The Director may refund any fee paid by mistake or any amount paid in excess of that required.

(e) The Secretary of Commerce shall, on the day each year on which the President submits the annual budget to the Congress, provide to the Committees on the Judiciary of the Senate and the House of Representatives—

- (1) a list of patent and trademark fee collections by the Patent and Trademark Office during the preceding fiscal year;
- (2) a list of activities of the Patent and Trademark Office during the preceding fiscal year which were supported by patent fee expenditures, trademark fee expenditures, and appropriations;
- (3) budget plans for significant programs, projects, and activities of the Office, including out-year funding estimates;
- (4) any proposed disposition of surplus fees by the Office; and
- (5) such other information as the committees consider necessary.

(July 19, 1952, ch. 950, 66 Stat. 796; Pub. L. 94–131, § 4, Nov. 14, 1975, 89 Stat. 690; Pub. L. 96–517, § 3, Dec. 12, 1980, 94 Stat. 3018; Pub. L. 97–247, § 3(g), Aug. 27, 1982, 96 Stat. 319; Pub. L. 97–258, § 3(i), Sept. 13, 1982, 96 Stat. 1065; Pub. L. 102–204, §§ 4, 5 (e), Dec. 10, 1991, 105 Stat. 1637, 1640; Pub. L. 105–358, § 4, Nov. 10, 1998, 112 Stat. 3274; Pub. L. 106–113, div. B, § 1000(a)(9) [title IV, §§ 4205, 4732 (a)(10)(A)], Nov. 29, 1999, 113 Stat. 1536, 1501A–555, 1501A–582; Pub. L. 107–273, div. C, title III, § 13206(b)(1)(B), Nov. 2, 2002, 116 Stat. 1906.)

#### Historical and Revision Notes

Based on Title 35, U.S.C., 1946 ed., § 79 (Mar. 6, 1920, ch. 94, § 1 (part), 41 Stat. 503, 512).

Language has been changed.

#### References in Text

Section 31 of the Trademark Act of 1946, referred to in subsec. (c), is classified to section 1113 of Title 15, Commerce and Trade.

#### Amendments

2002—Subsecs. (a), (b). Pub. L. 107–273 made technical correction to directory language of Pub. L. 106–113, § 1000(a)(9) [title IV, § 4732(a)(10)(A)]. See 1999 Amendment note below.

1999—Subsecs. (a), (b). Pub. L. 106–113, § 1000(a)(9) [title IV, § 4732(a)(10)(A)], as amended by Pub. L. 107–273, substituted “Director” for “Commissioner”.

*NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscprint.html>).*

Subsec. (c). Pub. L. 106–113 substituted “Director” for “Commissioner” wherever appearing and, in second sentence, substituted “All fees available” for “Fees available” and “shall be used” for “may be used”.

Subsec. (d). Pub. L. 106–113, § 1000(a)(9) [title IV, § 4732(a)(10)(A)], substituted “Director” for “Commissioner”.

1998—Subsec. (c). Pub. L. 105–358 substituted first sentence for former first sentence which read as follows: “Revenues from fees shall be available to the Commissioner to carry out, to the extent provided in appropriation Acts, the activities of the Patent and Trademark Office.”

1991—Subsec. (c). Pub. L. 102–204, § 5(e), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “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 related to trademarks.”

Subsec. (e). Pub. L. 102–204, § 4, added subsec. (e).

1982—Subsec. (b). Pub. L. 97–258 struck out “, the provisions of section 725e of title 31, United States Code, notwithstanding” after “United States”.

Subsec. (c). Pub. L. 97–247 inserted provision that fees available to the Commissioner under section 31 of the Trademark Act of 1946, as amended (15 U.S.C. 1113), be used exclusively for the processing of trademark registrations and for other services and materials related to trademarks.

1980—Pub. L. 96–517 designated existing provision relating to payment of patent fees as subsec. (a) and struck out provision that, except as provided in sections 361 (b) and 376 (b) of this title, the Commissioner deposit fees paid in the Treasury of the United States in such manner as directed by the Secretary of the Treasury, designated existing provision relating to return of excess amounts paid as subsec. (d), and added subsecs. (b) and (c).

1975—Pub. L. 94–131 inserted “, except as provided in sections 361 (b) and 376 (b) of this title.”.

### **Effective Date of 1999 Amendment**

Amendment by section 1000 (a)(9) [title IV, § 4732(a)(10)(A)] of Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000 (a)(9) [title IV, § 4731] of Pub. L. 106–113, set out as a note under section 1 of this title.

### **Effective Date of 1998 Amendment**

Amendment by Pub. L. 105–358 effective Oct. 1, 1998, see section 5 of Pub. L. 105–358, set out as a note under section 41 of this title.

### **Effective Date of 1982 Amendment**

Amendment by Pub. L. 97–247 effective Oct. 1, 1982, see section 17(a) of Pub. L. 97–247, set out as a note under section 41 of this title.

### **Effective Date of 1980 Amendment**

Amendment by Pub. L. 96–517 effective on first day of first fiscal year beginning on or after one calendar year after Dec. 12, 1980, subject to authorization of appropriation account credits from collected reexamination fees prior to the effective date, made available for payment of reexamination proceedings costs, see section 8(c) of Pub. L. 96–517, set out as a note under section 41 of this title.

### **Effective Date of 1975 Amendment**

Amendment by Pub. L. 94–131 effective Jan. 24, 1978, and applicable on and after that date to patent applications filed in the United States and to international applications, where applicable, see section 11 of Pub. L. 94–131, set out as an Effective Date note under section 351 of this title.

### **Authorization of Amounts Available to the Patent and Trademark Office**

Pub. L. 107–273, div. C, title III, § 13102, Nov. 2, 2002, 116 Stat. 1899, provided that:

“(a) In General.—There are authorized to be appropriated to the United States Patent and Trademark Office for salaries and necessary expenses for each of the fiscal years 2003 through 2008 an amount equal to the fees estimated by the Secretary of Commerce to be collected in each such fiscal year, respectively, under—

“(1) title 35, United States Code; and

*NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscpri.html>).*

“(2) the Act entitled ‘An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes’, approved July 5, 1946 (15 U.S.C. 1051 et seq.) (commonly referred to as the Trademark Act of 1946).

“(b) Estimates.—Not later than February 15, of each fiscal year, the Undersecretary of Commerce for Intellectual Property and the Director of the Patent and Trademark Office (in this subtitle [subtitle A (§§ 13101–13106) of title III of div. C of Pub. L. 107–273, amending sections 134, 141, 303, 312, and 315 of this title and enacting provisions set out as notes under sections 2, 134, and 303 of this title] referred to as the Director) shall submit an estimate of all fees referred to under subsection (a) to be collected in the next fiscal year to the chairman and ranking member of—

“(1) the Committees on Appropriations and Judiciary of the Senate; and

“(2) the Committees on Appropriations and Judiciary of the House of Representatives.”

### **Appropriations Authorized To Be Carried Over**

Pub. L. 100–703, title I, § 102, Nov. 19, 1988, 102 Stat. 4674, provided that: “Amounts appropriated under this Act and such fees as may be collected under title 35, United States Code, and the Trademark Act of 1946 (15 U.S.C. 1051 and following) may remain available until expended.”

Similar provisions were contained in the following prior authorization act:

Pub. L. 99–607, § 2, Nov. 6, 1986, 100 Stat. 3470.