TITLE 35 - PATENTS
PART II - PATENTABILITY OF INVENTIONS AND GRANT OF PATENTS
CHAPTER 11 - APPLICATION FOR PATENT

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

An application for patent for an invention disclosed in the manner provided by section 112 (a) (other than the requirement to disclose the best mode) 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. No application shall be entitled to the benefit of an earlier filed application under this section unless an amendment containing the specific reference to the earlier filed application is submitted at such time during the pendency of the application as required by the Director. The Director may consider the failure to submit such an amendment within that time period as a waiver of any benefit under this section. The Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed submission of an amendment under this section.


Amendment of Section

Pub. L. 112–29, § 20(j), (l), Sept. 16, 2011, 125 Stat. 335, provided that, effective upon the expiration of the 1-year period beginning on Sept. 16, 2011, and applicable to proceedings commenced on or after that effective date, this section is amended by striking “of this title” each place that term appears. See 2011 Amendment note below.

Pub. L. 112–29, § 3(f), (n), Sept. 16, 2011, 125 Stat. 288, 293, provided that, effective upon the expiration of the 18-month period beginning on Sept. 16, 2011, and applicable to certain applications for patent and any patents issuing thereon, this section is amended by striking “which is filed by an inventor or inventors named” and inserting “which names an inventor or joint inventor”. See 2011 Amendment note below.

Historical and Revision Notes

This section represents present law not expressed in the statute, except for the added requirement that the first application must be specifically mentioned in the second.

Amendments


Pub. L. 112–29, § 15(b), substituted “section 112 (a) (other than the requirement to disclose the best mode)” for “the first paragraph of section 112 of this title”.

Pub. L. 112–29, § 3(f), substituted “which names an inventor or joint inventor” for “which is filed by an inventor or inventors named”.

1999—Pub. L. 106–113 inserted at end “No application shall be entitled to the benefit of an earlier filed application under this section unless an amendment containing the specific reference to the earlier filed application is submitted at such time during the pendency of the application as required by the Director. The Director may consider the failure to submit such an amendment within that time period as a waiver of any benefit under this section. The Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed submission of an amendment under this section.”
1984—Pub. L. 98–622 substituted “which is filed by an inventor or inventors named in the previously filed application” for “by the same inventor”.

1975—Pub. L. 94–131 inserted “, or as provided by section 363 of this title,” after “filed in the United States”.

**Effective Date of 2011 Amendment**

Amendment by section 3(f) of Pub. L. 112–29 effective upon the expiration of the 18-month period beginning on Sept. 16, 2011, and applicable to certain applications for patent and any patents issuing thereon, see section 3(n) of Pub. L. 112–29, set out as an Effective Date of 2011 Amendment; Savings Provisions note under section 100 of this title.

Amendment by section 15(b) of Pub. L. 112–29 effective on Sept. 16, 2011, and applicable to proceedings commenced on or after that date, see section 15(c) of Pub. L. 112–29, set out as a note under section 119 of this title.

Amendment by section 20(j) of Pub. L. 112–29 effective upon the expiration of the 1-year period beginning on Sept. 16, 2011, and applicable to proceedings commenced on or after that effective date, see section 20(l) of Pub. L. 112–29, set out as a note under section 2 of this title.

**Effective Date of 1999 Amendment**

Amendment by Pub. L. 106–113 effective Nov. 29, 2000, and applicable only to applications (including international applications designating the United States) filed on or after that date, see section 1000 (a)(9) [title IV, § 4508] of Pub. L. 106–113, as amended, set out as a note under section 10 of this title.

**Effective Date of 1984 Amendment**

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

**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.