§ 122. Confidential status of applications; publication of patent applications

(a) Confidentiality.— Except as provided in subsection (b), 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 an Act of Congress or in such special circumstances as may be determined by the Director.

(b) Publication.—

(1) In general.—
(A) Subject to paragraph (2), each application for a patent shall be published, in accordance with procedures determined by the Director, promptly after the expiration of a period of 18 months from the earliest filing date for which a benefit is sought under this title. At the request of the applicant, an application may be published earlier than the end of such 18-month period.
(B) No information concerning published patent applications shall be made available to the public except as the Director determines.
(C) Notwithstanding any other provision of law, a determination by the Director to release or not to release information concerning a published patent application shall be final and nonreviewable.

(2) Exceptions.—
(A) An application shall not be published if that application is—
(i) no longer pending;
(ii) subject to a secrecy order under section 181 of this title;
(iii) a provisional application filed under section 111 (b) of this title; or
(iv) an application for a design patent filed under chapter 16 of this title.

(B) (i) If an applicant makes a request upon filing, certifying that the invention disclosed in the application has not and will not be the subject of an application filed in another country, or under a multilateral international agreement, that requires publication of applications 18 months after filing, the application shall not be published as provided in paragraph (1).
(ii) An applicant may rescind a request made under clause (i) at any time.
(iii) An applicant who has made a request under clause (i) but who subsequently files, in a foreign country or under a multilateral international agreement specified in clause (i), an application directed to the invention disclosed in the application filed in the Patent and Trademark Office, shall notify the Director of such filing not later than 45 days after the date of the filing of such foreign or international application. A failure of the applicant to provide such notice within the prescribed period shall result in the application being regarded as abandoned, unless it is shown to the satisfaction of the Director that the delay in submitting the notice was unintentional.
(iv) If an applicant rescinds a request made under clause (i) or notifies the Director that an application was filed in a foreign country or under a multilateral international agreement specified in clause (i), the application shall be published in accordance with the provisions of paragraph (1) on or as soon as is practical after the date that is specified in clause (i).
(v) If an applicant has filed applications in one or more foreign countries, directly or through a multilateral international agreement, and such foreign filed applications corresponding to an application filed in the Patent and Trademark Office or the description of the invention in such foreign filed applications is less extensive than the application or
description of the invention in the application filed in the Patent and Trademark Office, the applicant may submit a redacted copy of the application filed in the Patent and Trademark Office eliminating any part or description of the invention in such application that is not also contained in any of the corresponding applications filed in a foreign country. The Director may only publish the redacted copy of the application unless the redacted copy of the application is not received within 16 months after the earliest effective filing date for which a benefit is sought under this title. The provisions of section 154 (d) shall not apply to a claim if the description of the invention published in the redacted application filed under this clause with respect to the claim does not enable a person skilled in the art to make and use the subject matter of the claim.

(c) Protest and Pre-Issuance Opposition.— The Director shall establish appropriate procedures to ensure that no protest or other form of pre-issuance opposition to the grant of a patent on an application may be initiated after publication of the application without the express written consent of the applicant.

(d) National Security.— No application for patent shall be published under subsection (b)(1) if the publication or disclosure of such invention would be detrimental to the national security. The Director shall establish appropriate procedures to ensure that such applications are promptly identified and the secrecy of such inventions is maintained in accordance with chapter 17 of this title.


Amendment of Section

Pub. L. 112–29, § 8, Sept. 16, 2011, 125 Stat. 315, provided that, effective upon the expiration of the 1-year period beginning on Sept. 16, 2011, and applicable to any patent application filed before, on, or after that effective date, this section is amended by adding at the end the following:

(e) Preissuance Submissions by Third Parties.—

(1) In general.—Any third party may submit for consideration and inclusion in the record of a patent application, any patent, published patent application, or other printed publication of potential relevance to the examination of the application, if such submission is made in writing before the earlier of—

(A) the date a notice of allowance under section 151 is given or mailed in the application for patent; or
(B) the later of—

(i) 6 months after the date on which the application for patent is first published under section 122 by the Office, or
(ii) the date of the first rejection under section 132 of any claim by the examiner during the examination of the application for patent.

(2) Other requirements.—Any submission under paragraph (1) shall—

(A) set forth a concise description of the asserted relevance of each submitted document;
(B) be accompanied by such fee as the Director may prescribe; and
(C) include a statement by the person making such submission affirming that the submission was made in compliance with this section.

See 2011 Amendment note below.

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 notes below.

Historical and Revision Notes

This section enacts the Patent Office rule of secrecy of applications.
Amendments

Subsec. (d). Pub. L. 112–29, § 20(j), struck out “of this title” after “17”.

1999—Pub. L. 106–113 amended section catchline and text generally. Prior to amendment, text read as follows:
“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.”


Effective Date of 2011 Amendment

this section] shall take effect upon the expiration of the 1-year period beginning on the date of the enactment of this
Act [Sept. 16, 2011] and shall apply to any patent application filed before, on, or after that effective date.”

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 of 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, and applications published pursuant to subsec.
(b) of this section resulting from an international application filed before Nov. 29, 2000 not to be effective as prior art
as of the filing date of the international application, but to be effective as prior art in accordance with section 102
(e) of this title in effect on Nov. 28, 2000, 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 1975 Amendment

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section
1111 of Title 15, Commerce and Trade.

Study of Applicants Filing Only in United States

“(1) In general.—The Comptroller General shall conduct a 3-year study of the applicants who file only in the United
States on or after the effective date of this subtitle [see section 1000 (a)(9) [title IV, § 4508] of Pub. L. 106–113, set
out as an Effective Date of 1999 Amendment note under section 10 of this title] and shall provide the results of such
study to the Judiciary Committees of the House of Representatives and the Senate.
“(2) Contents.—The study conducted under paragraph (1) shall—
“(A) consider the number of such applicants in relation to the number of applicants who file in the United States and
outside of the United States;
“(B) examine how many domestic-only filers request at the time of filing not to be published;
“(C) examine how many such filers rescind that request or later choose to file abroad;
“(D) examine the status of the entity seeking an application and any correlation that may exist between such status
and the publication of patent applications; and
“(E) examine the abandonment/issuance ratios and length of application pendency before patent issuance or
abandonment for published versus unpublished applications.”