

§ 154. Contents and term of patent; provisional rights

(a) In General.—

(1) Contents.— Every patent shall contain a short title of the invention and a grant to the patentee, his heirs or assigns, of the right to exclude others from making, using, offering for sale, or selling the invention throughout the United States or importing the invention into the United States, and, if the invention is a process, of the right to exclude others from using, offering for sale or selling throughout the United States, or importing into the United States, products made by that process, referring to the specification for the particulars thereof.

(2) Term.— Subject to the payment of fees under this title, such grant shall be for a term beginning on the date on which the patent issues and ending 20 years from the date on which the application for the patent was filed in the United States or, if the application contains a specific reference to an earlier filed application or applications under section 120, 121, or 365 (c) of this title, from the date on which the earliest such application was filed.

(3) Priority.— Priority under section 119, 365 (a), or 365 (b) of this title shall not be taken into account in determining the term of a patent.

(4) Specification and drawing.— A copy of the specification and drawing shall be annexed to the patent and be a part of such patent.

(b) Adjustment of Patent Term.—

(1) Patent term guarantees.—

(A) Guarantee of prompt patent and trademark office responses.— Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the Patent and Trademark Office to—

(i) provide at least one of the notifications under section 132 of this title or a notice of allowance under section 151 of this title not later than 14 months after—

(I) the date on which an application was filed under section 111 (a) of this title; or

(II) the date on which an international application fulfilled the requirements of section 371 of this title;

(ii) respond to a reply under section 132, or to an appeal taken under section 134, within 4 months after the date on which the reply was filed or the appeal was taken;

(iii) act on an application within 4 months after the date of a decision by the Board of Patent Appeals and Interferences under section 134 or 135 or a decision by a Federal court under section 141, 145, or 146 in a case in which allowable claims remain in the application; or

(iv) issue a patent within 4 months after the date on which the issue fee was paid under section 151 and all outstanding requirements were satisfied,

the term of the patent shall be extended 1 day for each day after the end of the period specified in clause (i), (ii), (iii), or (iv), as the case may be, until the action described in such clause is taken.

(B) Guarantee of no more than 3-year application pendency.— Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including—

(i) any time consumed by continued examination of the application requested by the applicant under section 132 (b);
(ii) any time consumed by a proceeding under section 135 (a), any time consumed by
the imposition of an order under section 181, or any time consumed by appellate review
by the Board of Patent Appeals and Interferences or by a Federal court; or
(iii) any delay in the processing of the application by the United States Patent and
Trademark Office requested by the applicant except as permitted by paragraph (3)(C),
the term of the patent shall be extended 1 day for each day after the end of that 3-year period
until the patent is issued.

(C) Guarantee or adjustments for delays due to interferences, secrecy orders, and
appeals.— Subject to the limitations under paragraph (2), if the issue of an original patent
is delayed due to—
(i) a proceeding under section 135 (a);
(ii) the imposition of an order under section 181; or
(iii) appellate review by the Board of Patent Appeals and Interferences or by a Federal
court in a case in which the patent was issued under a decision in the review reversing
an adverse determination of patentability,
the term of the patent shall be extended 1 day for each day of the pendency of the
proceeding, order, or review, as the case may be.

(2) Limitations.—
(A) In general.— To the extent that periods of delay attributable to grounds specified in
paragraph (1) overlap, the period of any adjustment granted under this subsection shall not
exceed the actual number of days the issuance of the patent was delayed.
(B) Disclaimed term.— No patent the term of which has been disclaimed beyond a specified
date may be adjusted under this section beyond the expiration date specified in the disclaimer.
(C) Reduction of period of adjustment.—
(i) The period of adjustment of the term of a patent under paragraph (1) shall be reduced
by a period equal to the period of time during which the applicant failed to engage in
reasonable efforts to conclude prosecution of the application.
(ii) With respect to adjustments to patent term made under the authority of paragraph
(1)(B), an applicant shall be deemed to have failed to engage in reasonable efforts to
conclude processing or examination of an application for the cumulative total of any
periods of time in excess of 3 months that are taken to respond to a notice from the Office
making any rejection, objection, argument, or other request, measuring such 3-month
period from the date the notice was given or mailed to the applicant.
(iii) The Director shall prescribe regulations establishing the circumstances that
constitute a failure of an applicant to engage in reasonable efforts to conclude processing
or examination of an application.

(3) Procedures for patent term adjustment determination.—
(A) The Director shall prescribe regulations establishing procedures for the application for
and determination of patent term adjustments under this subsection.
(B) Under the procedures established under subparagraph (A), the Director shall—
(i) make a determination of the period of any patent term adjustment under this
subsection, and shall transmit a notice of that determination with the written notice of
allowance of the application under section 151; and
(ii) provide the applicant one opportunity to request reconsideration of any patent term
adjustment determination made by the Director.
(C) The Director shall reinstate all or part of the cumulative period of time of an adjustment
under paragraph (2)(C) if the applicant, prior to the issuance of the patent, makes a showing
that, in spite of all due care, the applicant was unable to respond within the 3-month period,
but in no case shall more than three additional months for each such response beyond the original 3-month period be reinstated.

(D) The Director shall proceed to grant the patent after completion of the Director’s determination of a patent term adjustment under the procedures established under this subsection, notwithstanding any appeal taken by the applicant of such determination.

(4) Appeal of patent term adjustment determination.—

(A) An applicant dissatisfied with a determination made by the Director under paragraph (3) shall have remedy by a civil action against the Director filed in the United States District Court for the Eastern District of Virginia within 180 days after the grant of the patent. Chapter 7 of title 5 shall apply to such action. Any final judgment resulting in a change to the period of adjustment of the patent term shall be served on the Director, and the Director shall thereafter alter the term of the patent to reflect such change.

(B) The determination of a patent term adjustment under this subsection shall not be subject to appeal or challenge by a third party prior to the grant of the patent.

c) Continuation.—

(1) Determination.— The term of a patent that is in force on or that results from an application filed before the date that is 6 months after the date of the enactment of the Uruguay Round Agreements Act shall be the greater of the 20-year term as provided in subsection (a), or 17 years from grant, subject to any terminal disclaimers.

(2) Remedies.— The remedies of sections 283, 284, and 285 of this title shall not apply to acts which—

(A) were commenced or for which substantial investment was made before the date that is 6 months after the date of the enactment of the Uruguay Round Agreements Act; and

(B) became infringing by reason of paragraph (1).

(3) Remuneration.— The acts referred to in paragraph (2) may be continued only upon the payment of an equitable remuneration to the patentee that is determined in an action brought under chapter 28 and chapter 29 (other than those provisions excluded by paragraph (2)) of this title.

d) Provisional Rights.—

(1) In general.— In addition to other rights provided by this section, a patent shall include the right to obtain a reasonable royalty from any person who, during the period beginning on the date of publication of the application for such patent under section 122 (b), or in the case of an international application filed under the treaty defined in section 351 (a) designating the United States under Article 21(2)(a) of such treaty, the date of publication of the application, and ending on the date the patent is issued—

(A) (i) makes, uses, offers for sale, or sells in the United States the invention as claimed in the published patent application or imports such an invention into the United States; or

(ii) if the invention as claimed in the published patent application is a process, uses, offers for sale, or sells in the United States or imports into the United States products made by that process as claimed in the published patent application; and

(B) had actual notice of the published patent application and, in a case in which the right arising under this paragraph is based upon an international application designating the United States that is published in a language other than English, had a translation of the international application into the English language.

(2) Right based on substantially identical inventions.— The right under paragraph (1) to obtain a reasonable royalty shall not be available under this subsection unless the invention as claimed in the patent is substantially identical to the invention as claimed in the published patent application.

(3) Time limitation on obtaining a reasonable royalty.— The right under paragraph (1) to obtain a reasonable royalty shall be available only in an action brought not later than 6 years
after the patent is issued. The right under paragraph (1) to obtain a reasonable royalty shall not be affected by the duration of the period described in paragraph (1).

(4) Requirements for international applications.—

(A) Effective date.— The right under paragraph (1) to obtain a reasonable royalty based upon the publication under the treaty defined in section 351(a) of an international application designating the United States shall commence on the date of publication under the treaty of the international application, or, if the publication under the treaty of the international application is in a language other than English, on the date on which the Patent and Trademark Office receives a translation of the publication in the English language.

(B) Copies.— The Director may require the applicant to provide a copy of the international application and a translation thereof.

Subsec. (b)(1)(C). Pub. L. 112–29, § 3(j)(2)(B), amended heading generally. Prior to amendment, heading read as follows: “Guarantee or adjustments for delays due to interferences, secrecy orders, and appeals”.
Subsec. (c)(3). Pub. L. 112–29, § 20(j), struck out “of this title” after “excluded by paragraph (2)”).
Subsec. (d)(4)(A). Pub. L. 107–273, § 13204, amended subsec. (d)(4)(A) as in effect on Nov. 29, 2000, by substituting “the date of” for “the date on which the Patent and Trademark Office receives a copy of the” and “publication in the English language” for “international application in the English language”.
1999—Pub. L. 106–113, § 100(a)(9) [title IV, § 4504(1)], inserted “; provisional rights” after “patent” in section catchline.
Subsec. (b). Pub. L. 106–113, § 100(a)(9) [title IV, § 4404(a)], amended heading and text of subsec. (b) generally. Prior to amendment, text provided for interference delay or secrecy orders, extensions for appellate review, a limitations period, and a maximum period of 5 years duration for all extensions.
1994—Pub. L. 103–465 substituted “subject to the payment of fees” for “payment of issue fees as provided for in this title”.
1988—Pub. L. 100–418 inserted “and, if the invention is a process, of the right to exclude others from using or selling throughout the United States, or importing into the United States, products made by that process,” 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.”
1980—Pub. L. 96–517 substituted “payment of fees” for “payment of issue fees”.
1965—Pub. L. 84–83 added “subject to the payment of issue fees as provided for in this title”.

Effective Date of 2011 Amendment

Amendment by section 3(j)(1), (2)(B) 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 9(a) of Pub. L. 112–29 effective Sept. 16, 2011, and applicable to any civil action commenced on or after that date, see section 9(b) of Pub. L. 112–29, set out as a note under section 1071 of Title 15, Commerce and Trade.

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

Pub. L. 106–113, div. B, § 100(a)(9) [title IV, § 4405(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–560, provided that: “The amendments made by sections 4402 and 4404 [amending this section, sections 156 and 282 of this title, and section 1295 of Title 28, Judiciary and Judicial Procedure] shall take effect on the date that is 6 months after the date of the enactment of this Act [Nov. 29, 1999] and, except for a design patent application filed under chapter 16 of title
35, United States Code, shall apply to any application filed on or after the date that is 6 months after the date of the enactment of this Act.”

Amendment by section 1000 (a)(9) [title IV, § 4504] of Pub. L. 106–113 effective Nov. 29, 2000, applicable only to applications (including international applications designating the United States) filed on or after that date, and additionally applicable to any pending application filed before Nov. 29, 2000, if such pending application is published pursuant to a request of the applicant under such procedures as may be established by the Director, 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 1994 Amendment

Section 534 of title V of Pub. L. 103–465 provided that:

“(a) In General.—Subject to subsection (b), the amendments made by this subtitle [subtitle C (§§ 531–534) of title V of Pub. L. 103–465, amending this section and sections 41, 104, 111, 119, 156, 172, 173, 252, 262, 271, 272, 287, 292, 295, 307, 365, and 373 of this title] take effect on the date that is one year after the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995].

“(b) Patent Applications.—

“(1) In general.—Subject to paragraph (2), the amendments made by section 532 [amending this section and sections 41, 111, 119, 156, 172, 173, 365, and 373 of this title] take effect on the date that is 6 months after the date of the enactment of this Act [Dec. 8, 1994] and shall apply to all patent applications filed in the United States on or after the effective date.

“(2) Section 154 (a)(1).—Section 154 (a)(1) of title 35, United States Code, as amended by section 532(a)(1) of this Act, shall take effect on the effective date described in subsection (a).

“(3) Earliest filing.—The term of a patent granted on an application that is filed on or after the effective date described in subsection (a) and that contains a specific reference to an earlier application filed under the provisions of section 120, 121, or 365 (c) of title 35, United States Code, shall be measured from the filing date of the earliest filed application.”

Effective Date of 1988 Amendment

Amendment by Pub. L. 100–418 effective 6 months after Aug. 23, 1988, and, subject to enumerated exceptions, applicable only with respect to products made or imported after such effective date, see section 9006 of Pub. L. 100–418, set out as a note under section 271 of this title.

Effective Date of 1980 Amendment


Effective Date of 1965 Amendment

Amendment by Pub. L. 89–83 effective three months after July 24, 1965, see section 7(a) of Pub. L. 89–83, set out as a note under section 41 of this title.

Regulations

Section 532(a)(2) of Pub. L. 103–465 authorized the Commissioner of Patents and Trademarks to prescribe regulations for further limited reexamination of applications pending 2 years or longer and for examination of more than 1 independent and distinct invention in applications pending 3 years or longer, as of the effective date of section 154 (a)(2) of this title, and to establish appropriate related fees.