§ 209. Licensing federally owned inventions

(a) Authority.— A Federal agency may grant an exclusive or partially exclusive license on a federally owned invention under section 207 (a)(2) only if—

(1) granting the license is a reasonable and necessary incentive to—

(A) call forth the investment capital and expenditures needed to bring the invention to practical application; or

(B) otherwise promote the invention’s utilization by the public;

(2) the Federal agency finds that the public will be served by the granting of the license, as indicated by the applicant’s intentions, plans, and ability to bring the invention to practical application or otherwise promote the invention’s utilization by the public, and that the proposed scope of exclusivity is not greater than reasonably necessary to provide the incentive for bringing the invention to practical application, as proposed by the applicant, or otherwise to promote the invention’s utilization by the public;

(3) the applicant makes a commitment to achieve practical application of the invention within a reasonable time, which time may be extended by the agency upon the applicant’s request and the applicant’s demonstration that the refusal of such extension would be unreasonable;

(4) granting the license will not tend to substantially lessen competition or create or maintain a violation of the Federal antitrust laws; and

(5) in the case of an invention covered by a foreign patent application or patent, the interests of the Federal Government or United States industry in foreign commerce will be enhanced.

(b) Manufacture in United States.— A Federal agency shall normally grant a license under section 207 (a)(2) to use or sell any federally owned invention in the United States only to a licensee who agrees that any products embodying the invention or produced through the use of the invention will be manufactured substantially in the United States.

(c) Small Business.— First preference for the granting of any exclusive or partially exclusive licenses under section 207 (a)(2) shall be given to small business firms having equal or greater likelihood as other applicants to bring the invention to practical application within a reasonable time.

(d) Terms and Conditions.— Any licenses granted under section 207 (a)(2) shall contain such terms and conditions as the granting agency considers appropriate, and shall include provisions—

(1) retaining a nontransferrable, irrevocable, paid-up license for any Federal agency to practice the invention or have the invention practiced throughout the world by or on behalf of the Government of the United States;

(2) requiring periodic reporting on utilization of the invention, and utilization efforts, by the licensee, but only to the extent necessary to enable the Federal agency to determine whether the terms of the license are being complied with, except that any such report 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; and

(3) empowering the Federal agency to terminate the license in whole or in part if the agency determines that—

(A) the licensee is not executing its commitment to achieve practical application of the invention, including commitments contained in any plan submitted in support of 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;
(B) the licensee is in breach of an agreement described in subsection (b);

(C) termination 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; or

(D) the licensee has been found by a court of competent jurisdiction to have violated the
Federal antitrust laws in connection with its performance under the license agreement.

(e) Public Notice.— No exclusive or partially exclusive license may be granted under section 207
(a)(2) unless public notice of the intention to grant an exclusive or partially exclusive license on a
federally owned invention has been provided in an appropriate manner at least 15 days before the
license is granted, and the Federal agency has considered all comments received before the end of the
comment period in response to that public notice. This subsection shall not apply to the licensing of
inventions made under a cooperative research and development agreement entered into under section

(f) Plan.— 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 or marketing of the invention, except that any such plan 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.


Amendment of Subsection (d)(1)

Pub. L. 112–29, § 20(i)(3), (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, subsection
(d)(1) of this section is amended by striking “nontransferrable” and inserting “nontransferable”. See 2011 Amendment
note below.

Amendments


2000—Pub. L. 106–404 amended section catchline and text generally, restructuring and revising provisions setting
forth criteria, terms, and conditions relating to granting of licenses on federally owned inventions.

Effective Date of 2011 Amendment

Amendment by 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.