of this subsection, held office pursuant to an appointment by the Director to take effect on the date on which the Director initially appointed the administrative patent judge.

[(d) DEFENSE TO CHALLENGE OF APPOINTMENT.—It shall be a defense to a challenge to the appointment of an administrative patent judge on the basis of the judge's having been originally appointed by the Director that the administrative patent judge so appointed was acting as a de facto officer.]

§ 6. Patent Trial and Appeal Board

(a) IN GENERAL.—There shall be in the Office a Patent Trial and Appeal Board. The Director, the Deputy Director, the Commissioner for Patents, the Commissioner for Trademarks, and the administrative patent judges shall constitute the Patent Trial and Appeal Board. The administrative patent judges shall be persons of competent legal knowledge and scientific ability who are appointed by the Secretary, in consultation with the Director. Any reference in any Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to the Board of Patent Appeals and Interferences is deemed to refer to the Patent Trial and Appeal Board.

(b) DUTIES.—The Patent Trial and Appeal Board shall—

(1) on written appeal of an applicant, review adverse decisions of examiners upon applications for patents pursuant to section 134(a);

(2) review appeals of reexaminations pursuant to section 134(b);

(3) conduct derivation proceedings pursuant to section 135; and

(4) conduct inter partes reviews and post-grant reviews pursuant to chapters 31 and 32.

(c) 3-MEMBER PANELS.—Each appeal, derivation proceeding, post-grant review, and inter partes review shall be heard by at least 3 members of the Patent Trial and Appeal Board, who shall be designated by the Director. Only the Patent Trial and Appeal Board may grant rehearings.

(d) TREATMENT OF PRIOR APPOINTMENTS.—The Secretary of Commerce may, in the Secretary's discretion, deem the appointment of an administrative patent judge who, before the date of the enactment of this subsection, held office pursuant to an appointment by the Director to take effect on the date on which the Director initially appointed the administrative patent judge. It shall be a defense to a challenge to the appointment of an administrative patent judge on the basis of the judge's having been originally appointed by the Director that the administrative patent judge so appointed was acting as a de facto officer.

* * * * * * *

§ 12. Copies of patents and applications for public libraries

The Director may supply copies of specifications and drawings of patents in printed or electronic form and published applications for patents to public libraries in the United States which shall maintain such copies for the use of the public, at the rate for each

year's issue established for this purpose in section 41(d) [of this title].

* * * * * * *

CHAPTER 3—PRACTICE BEFORE PATENT AND TRADEMARK OFFICE

§ 32. Suspension or exclusion from practice

The Director may, after notice and opportunity for a hearing, suspend or exclude, either generally or in any particular case, from further practice before the Patent and Trademark Office, any person, agent, or attorney shown to be incompetent or disreputable, or guilty of gross misconduct, or who does not comply with the regulations established under section 2(b)(2)(D) [of this title], or who shall, by word, circular, letter, or advertising, with intent to defraud in any manner, deceive, mislead, or threaten any applicant or prospective applicant, or other person having immediate or prospective business before the Office. The reasons for any such suspension or exclusion shall be duly recorded. The Director shall have the discretion to designate any attorney who is an officer or employee of the United States Patent and Trademark Office to conduct the hearing required by this section. *A proceeding under this section shall be commenced not later than the earlier of either the date that is 10 years after the date on which the misconduct forming the basis for the proceeding occurred, or 1 year after the date on which the misconduct forming the basis for the proceeding is made known to an officer or employee of the Office as prescribed in the regulations established under section 2(b)(2)(D).* The [United States District Court for the District of Columbia] *United States District Court for the Eastern District of Virginia*, under such conditions and upon such proceedings as it by its rules determines, may review the action of the Director upon the petition of the person so refused recognition or so suspended or excluded.

* * * * * * *

CHAPTER 4—PATENT FEES; FUNDING; SEARCH SYSTEMS

§ 41. Patent fees; patent and trademark search systems

[(a) The Director shall charge the following fees:

[(1)(A) On filing each application for an original patent, except in design or plant cases, $690.

[(B) In addition, on filing or on presentation at any other time, $78 for each claim in independent form which is in excess of 3, $18 for each claim (whether independent or dependent) which is in excess of 20, and $260 for each application containing a multiple dependent claim.

[(C) On filing each provisional application for an original patent, $150.

[(2) For issuing each original or reissue patent, except in design or plant cases, $1,210.

[(3) In design and plant cases—

[(A) on filing each design application, $310;

[(B) on filing each plant application, $480;

[(C) on issuing each design patent, $430; and

[(D) on issuing each plant patent, $580.

[(4)(A) On filing each application for the reissue of a patent, $690.

[(B) In addition, on filing or on presentation at any other time, $78 for each claim in independent form which is in excess of the number of independent claims of the original patent, and $18 for each claim (whether independent or dependent) which is in excess of 20 and also in excess of the number of claims of the original patent.

[(5) On filing each disclaimer, $110.

[(6)(A) On filing an appeal from the examiner to the Board of Patent Appeals and Interferences, $300.

[(B) In addition, on filing a brief in support of the appeal, $300, and on requesting an oral hearing in the appeal before the Board of Patent Appeals and Interferences, $260.

[(7) On filing each petition for the revival of an unintentionally abandoned application for a patent, for the unintentionally delayed payment of the fee for issuing each patent, or for an unintentionally delayed response by the patent owner in any reexamination proceeding, $1,210, unless the petition is filed under section 133 or 151 of this title, in which case the fee shall be $110.

[(8) For petitions for 1-month extensions of time to take actions required by the Director in an application—

[(A) on filing a first petition, $110;

[(B) on filing a second petition, $270; and

[(C) on filing a third petition or subsequent petition, $490.

[(9) Basic national fee for an international application where the Patent and Trademark Office was the International Preliminary Examining Authority and the International Searching Authority, $670.

[(10) Basic national fee for an international application where the Patent and Trademark Office was the International Searching Authority but not the International Preliminary Examining Authority, $690.

[(11) Basic national fee for an international application where the Patent and Trademark Office was neither the International Searching Authority nor the International Preliminary Examining Authority, $970.

[(12) Basic national fee for an international application where the international preliminary examination fee has been paid to the Patent and Trademark Office, and the international preliminary examination report states that the provisions of Article 33(2), (3), and (4) of the Patent Cooperation Treaty have been satisfied for all claims in the application entering the national stage, $96.

[(13) For filing or later presentation of each independent claim in the national stage of an international application in excess of 3, $78.

[(14) For filing or later presentation of each claim (whether independent or dependent) in a national stage of an international application in excess of 20, $18.

[(15) For each national stage of an international application containing a multiple dependent claim, $260.

For the purpose of computing fees, a multiple dependent claim referred to in section 112 of this title or any claim depending therefrom shall be considered as separate dependent claims in accordance with the number of claims to which reference is made. Errors in payment of the additional fees may be rectified in accordance with regulations of the Director.

[(b) The Director shall charge the following fees for maintaining in force all patents based on applications filed on or after December 12, 1980:

[(1) 3 years and 6 months after grant, $830.

[(2) 7 years and 6 months after grant, $1,900.

[(3) 11 years and 6 months after grant, $2,910.

Unless payment of the applicable maintenance fee is received in the Patent and Trademark Office on or before the date the fee is due or within a grace period of 6 months thereafter, the patent will expire as of the end of such grace period. The Director may require the payment of a surcharge as a condition of accepting within such 6-month grace period the payment of an applicable maintenance fee. No fee may be established for maintaining a design or plant patent in force.]

(a) GENERAL FEES.—The Director shall charge the following fees:

(1) FILING AND BASIC NATIONAL FEES.—

(A) On filing each application for an original patent, except for design, plant, or provisional applications, $330.

(B) On filing each application for an original design patent, $220.

(C) On filing each application for an original plant patent, $220.

(D) On filing each provisional application for an original patent, $220.

(E) On filing each application for the reissue of a patent, $330.

(F) The basic national fee for each international application filed under the treaty defined in section 351(a) entering the national stage under section 371, $330.

(G) In addition, excluding any sequence listing or computer program listing filed in an electronic medium as prescribed by the Director, for any application the specification and drawings of which exceed 100 sheets of paper (or equivalent as prescribed by the Director if filed in an electronic medium), $270 for each additional 50 sheets of paper (or equivalent as prescribed by the Director if filed in an electronic medium) or fraction thereof.

(2) EXCESS CLAIMS FEES.—

(A) IN GENERAL.—In addition to the fee specified in paragraph (1)—

(i) on filing or on presentation at any other time, $220 for each claim in independent form in excess of 3;

(ii) on filing or on presentation at any other time, $52 for each claim (whether dependent or independent) in excess of 20; and

(iii) for each application containing a multiple dependent claim, $390.

(B) MULTIPLE DEPENDENT CLAIMS.—For the purpose of computing fees under subparagraph (A), a multiple dependent claim referred to in section 112 or any claim depending therefrom shall be considered as separate dependent claims in accordance with the number of claims to which reference is made.

(C) REFUNDS; ERRORS IN PAYMENT.—The Director may by regulation provide for a refund of any part of the fee specified in subparagraph (A) for any claim that is canceled before an examination on the merits, as prescribed by the Director, has been made of the application under section 131. Errors in payment of the additional fees under this paragraph may be rectified in accordance with regulations prescribed by the Director.

(3) EXAMINATION FEES.—

(A) IN GENERAL.—

(i) For examination of each application for an original patent, except for design, plant, provisional, or international applications, $220.

(ii) For examination of each application for an original design patent, $140.

(iii) For examination of each application for an original plant patent, $170.

(iv) For examination of the national stage of each international application, $220.

(v) For examination of each application for the reissue of a patent, $650.

(B) APPLICABILITY OF OTHER FEE PROVISIONS.—The provisions of paragraphs (3) and (4) of section 111(a) relating to the payment of the fee for filing the application shall apply to the payment of the fee specified in subparagraph (A) with respect to an application filed under section 111(a). The provisions of section 371(d) relating to the payment of the national fee shall apply to the payment of the fee specified in subparagraph (A) with respect to an international application.

(4) ISSUE FEES.—

(A) For issuing each original patent, except for design or plant patents, $1,510.

(B) For issuing each original design patent, $860.

(C) For issuing each original plant patent, $1,190.

(D) For issuing each reissue patent, $1,510.

(5) DISCLAIMER FEE.—On filing each disclaimer, $140.

(6) APPEAL FEES.—

(A) On filing an appeal from the examiner to the Patent Trial and Appeal Board, $540.

(B) In addition, on filing a brief in support of the appeal, $540, and on requesting an oral hearing in the appeal before the Patent Trial and Appeal Board, $1,080.

(7) REVIVAL FEES.—On filing each petition for the revival of an unintentionally abandoned application for a patent, for the unintentionally delayed payment of the fee for issuing each patent, or for an unintentionally delayed response by the patent

owner in any reexamination proceeding, $1,620, unless the petition is filed under section 133 or 151, in which case the fee shall be $540.

(8) EXTENSION FEES.—For petitions for 1-month extensions of time to take actions required by the Director in an application—

(A) on filing a first petition, $130;

(B) on filing a second petition, $360; and

(C) on filing a third or subsequent petition, $620.

(b) MAINTENANCE FEES.—

(1) IN GENERAL.—The Director shall charge the following fees for maintaining in force all patents based on applications filed on or after December 12, 1980:

(A) Three years and 6 months after grant, $980.

(B) Seven years and 6 months after grant, $2,480.

(C) Eleven years and 6 months after grant, $4,110.

(2) GRACE PERIOD; SURCHARGE.—Unless payment of the applicable maintenance fee under paragraph (1) is received in the Office on or before the date the fee is due or within a grace period of 6 months thereafter, the patent shall expire as of the end of such grace period. The Director may require the payment of a surcharge as a condition of accepting within such 6-month grace period the payment of an applicable maintenance fee.

(3) NO MAINTENANCE FEE FOR DESIGN OR PLANT PATENT.—No fee may be established for maintaining a design or plant patent in force.

[(c)(1) The Director]

(c) DELAYS IN PAYMENT OF MAINTENANCE FEES.—

(1) ACCEPTANCE.—The Director may accept the payment of any maintenance fee required by subsection (b) of this section which is made within twenty-four months after the six-month grace period if the delay is shown to the satisfaction of the Director to have been unintentional, or at any time after the six-month grace period if the delay is shown to the satisfaction of the Director to have been unavoidable. The Director may require the payment of a surcharge as a condition of accepting payment of any maintenance fee after the six-month grace period. If the Director accepts payment of a maintenance fee after the six-month grace period, the patent shall be considered as not having expired at the end of the grace period.

[(2) A patent]

(2) EFFECT ON RIGHTS OF OTHERS.—A patent, the term of which has been maintained as a result of the acceptance of a payment of a maintenance fee under this subsection, shall not abridge or affect the right of any person or that person's successors in business who made, purchased, offered to sell, or used anything protected by the patent within the United States, or imported anything protected by the patent into the United States after the 6-month grace period but prior to the acceptance of a maintenance fee under this subsection, to continue the use of, to offer for sale, or to sell to others to be used, offered for sale, or sold, the specific thing so made, purchased, offered for sale, used, or imported. The court before which such matter is in question may provide for the continued manufacture, use, offer for sale, or sale of the thing made, purchased,

offered for sale, or used within the United States, or imported into the United States, as specified, or for the manufacture, use, offer for sale, or sale in the United States of which substantial preparation was made after the 6-month grace period but before the acceptance of a maintenance fee under this subsection, and the court may also provide for the continued practice of any process that is practiced, or for the practice of which substantial preparation was made, after the 6-month grace period but before the acceptance of a maintenance fee under this subsection, to the extent and under such terms as the court deems equitable for the protection of investments made or business commenced after the 6-month grace period but before the acceptance of a maintenance fee under this subsection.

[(d) The Director shall establish fees for all other processing, services, or materials relating to patents not specified in this section to recover the estimated average cost to the Office of such processing, services, or materials, except that the Director shall charge the following fees for the following services:

[(1) For recording a document affecting title, $40 per property.

[(2) For each photocopy, $.25 per page.

[(3) For each black and white copy of a patent, $3.

The yearly fee for providing a library specified in section 13 of this title with uncertified printed copies of the specifications and drawings for all patents in that year shall be $50.]

(d) PATENT SEARCH AND OTHER FEES.—

(1) PATENT SEARCH FEES.—

(A) IN GENERAL.—The Director shall charge the fees specified under subparagraph (B) for the search of each application for a patent, except for provisional applications. The Director shall adjust the fees charged under this paragraph to ensure that the fees recover an amount not to exceed the estimated average cost to the Office of searching applications for patent either by acquiring a search report from a qualified search authority, or by causing a search by Office personnel to be made, of each application for patent.

(B) SPECIFIC FEES.—The fees referred to in subparagraph (A) are—

(i) $540 for each application for an original patent, except for design, plant, provisional, or international applications;

(ii) $100 for each application for an original design patent;

(iii) $330 for each application for an original plant patent;

(iv) $540 for the national stage of each international application; and

(v) $540 for each application for the reissue of a patent.

(C) APPLICABILITY OF OTHER PROVISIONS.—The provisions of paragraphs (3) and (4) of section 111(a) relating to the payment of the fee for filing the application shall apply to the payment of the fee specified in this paragraph with respect to an application filed under section 111(a). The

provisions of section 371(d) relating to the payment of the national fee shall apply to the payment of the fee specified in this paragraph with respect to an international application.

(D) REFUNDS.—The Director may by regulation provide for a refund of any part of the fee specified in this paragraph for any applicant who files a written declaration of express abandonment as prescribed by the Director before an examination has been made of the application under section 131.

(E) APPLICATIONS SUBJECT TO SECRECY ORDER.—A search of an application that is the subject of a secrecy order under section 181 or otherwise involves classified information may be conducted only by Office personnel.

(F) CONFLICTS OF INTEREST.—A qualified search authority that is a commercial entity may not conduct a search of a patent application if the entity has any direct or indirect financial interest in any patent or in any pending or imminent application for patent filed or to be filed in the Office.

(2) OTHER FEES.—

(A) IN GENERAL.—The Director shall establish fees for all other processing, services, or materials relating to patents not specified in this section to recover the estimated average cost to the Office of such processing, services, or materials, except that the Director shall charge the following fees for the following services:

(i) For recording a document affecting title, $40 per property.

(ii) For each photocopy, $.25 per page.

(iii) For each black and white copy of a patent, $3.

(B) COPIES FOR LIBRARIES.—The yearly fee for providing a library specified in section 12 with uncertified printed copies of the specifications and drawings for all patents in that year shall be $50.

(e) ⟦The Director⟧ *WAIVER OF FEES; COPIES REGARDING NOTICE.—The Director* may waive the payment of any fee for any service or material related to patents in connection with an occasional or incidental request made by a department or agency of the Government, or any officer thereof. The Director may provide any applicant issued a notice under section 132 ⟦of this title⟧ with a copy of the specifications and drawings for all patents referred to in that notice without charge.

(f) ⟦The fees⟧ *ADJUSTMENT OF FEES.—The fees* established in subsections (a) and (b) of this section may be adjusted by the Director on October 1, 1992, and every year thereafter, to reflect any fluctuations occurring during the previous 12 months in the Consumer Price Index, as determined by the Secretary of Labor. Changes of less than 1 per centum may be ignored.

⟦(g) No fee established by the Director under this section shall take effect until at least 30 days after notice of the fee has been published in the Federal Register and in the Official Gazette of the Patent and Trademark Office.

⟦(h)(1) Fees charged under subsection (a) or (b) shall be reduced by 50 percent with respect to their application to any small

business concern as defined under section 3 of the Small Business Act, and to any independent inventor or nonprofit organization as defined in regulations issued by the Director.

[(2) With respect to its application to any entity described in paragraph (1), any surcharge or fee charged under subsection (c) or (d) shall not be higher than the surcharge or fee required of any other entity under the same or substantially similar circumstances.]

(h) FEES FOR SMALL ENTITIES.—

(1) REDUCTIONS IN FEES.—Subject to paragraph (3), fees charged under subsections (a), (b), and (d)(1) shall be reduced by 50 percent with respect to their application to any small business concern as defined under section 3 of the Small Business Act, and to any independent inventor or nonprofit organization as defined in regulations issued by the Director.

(2) SURCHARGES AND OTHER FEES.—With respect to its application to any entity described in paragraph (1), any surcharge or fee charged under subsection (c) or (d) shall not be higher than the surcharge or fee required of any other entity under the same or substantially similar circumstances.

(3) REDUCTION FOR ELECTRONIC FILING.—The fee charged under subsection (a)(1)(A) shall be reduced by 75 percent with respect to its application to any entity to which paragraph (1) applies, if the application is filed by electronic means as prescribed by the Director.

[(i)(1) The Director]

(i) ELECTRONIC PATENT AND TRADEMARK DATA.—

(1) MAINTENANCE OF COLLECTIONS.—The Director shall maintain, for use by the public, paper, microform, or electronic collections of United States patents, foreign patent documents, and United States trademark registrations arranged to permit search for and retrieval of information. The Director may not impose fees directly for the use of such collections, or for the use of the public patent or trademark search rooms or libraries.

[(2) The Director]

(2) AVAILABILITY OF AUTOMATED SEARCH SYSTEMS.—The Director shall provide for the full deployment of the automated search systems of the Patent and Trademark Office so that such systems are available for use by the public, and shall assure full access by the public to, and dissemination of, patent and trademark information, using a variety of automated methods, including electronic bulletin boards and remote access by users to mass storage and retrieval systems.

[(3) The Director]

(3) ACCESS FEES.—The Director may establish reasonable fees for access by the public to the automated search systems of the Patent and Trademark Office. If such fees are established, a limited amount of free access shall be made available to users of the systems for purposes of education and training. The Director may waive the payment by an individual of fees authorized by this subsection upon a showing of need or hardship, and if such a waiver is in the public interest.

[(4) The Director]

(4) ANNUAL REPORT TO CONGRESS.—The Director shall submit to the Congress an annual report on the automated search systems of the Patent and Trademark Office and the access by the public to such systems. The Director shall also publish such report in the Federal Register. The Director shall provide an opportunity for the submission of comments by interested persons on each such report.

§ 42. Patent and Trademark Office funding

(a) * * *

(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**]** *United States Patent and Trademark Office Public Enterprise Fund* in the Treasury of the United States.

(c) **[**To the extent and in the amounts provided in advance in appropriations Acts, fees**]** *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**]** *shall be collected by the Director and shall be available until expended* 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.

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CHAPTER 10—PATENTABILITY OF INVENTIONS

Sec.
100. Definitions.
* * * * * * *
[102. Conditions for patentability; novelty and loss of right to patent.**]**
102. Conditions for patentability; novelty.
* * * * * * *
[104. Invention made abroad.**]**
* * * * * * *

§ 100. Definitions

When used in this title unless the context otherwise indicates—

(a) * * *

* * * * * * *

(e) The term "third-party requester" means a person requesting ex parte reexamination under section 302 **[**or inter partes reexamination under section 311**]** who is not the patent owner.

(f) The term "inventor" means the individual or, if a joint invention, the individuals collectively who invented or discovered the subject matter of the invention.

(g) The terms "joint inventor" and "coinventor" mean any 1 of the individuals who invented or discovered the subject matter of a joint invention.

(h) The term "joint research agreement" means a written contract, grant, or cooperative agreement entered into by 2 or more per-

sons or entities for the performance of experimental, developmental, or research work in the field of the claimed invention.

(i)(1) The term "effective filing date" for a claimed invention in a patent or application for patent means—

(A) if subparagraph (B) does not apply, the actual filing date of the patent or the application for the patent containing a claim to the invention; or

(B) the filing date of the earliest application for which the patent or application is entitled, as to such invention, to a right of priority under section 119, 365(a), or 365(b) or to the benefit of an earlier filing date under section 120, 121, or 365(c).

(2) The effective filing date for a claimed invention in an application for reissue or reissued patent shall be determined by deeming the claim to the invention to have been contained in the patent for which reissue was sought.

(j) The term "claimed invention" means the subject matter defined by a claim in a patent or an application for a patent.

* * * * * * *

[§ 102. Conditions for patentability; novelty and loss of right to patent

[A person shall be entitled to a patent unless—

[(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent, or

[(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States, or

[(c) he has abandoned the invention, or

[(d) the invention was first patented or caused to be patented, or was the subject of an inventor's certificate, by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application for patent or inventor's certificate filed more than twelve months before the filing of the application in the United States, or

[(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language; or

[(f) he did not himself invent the subject matter sought to be patented, or

[(g)(1) during the course of an interference conducted under section 135 or section 291, another inventor involved therein establishes, to the extent permitted in section 104, that before such person's invention thereof the invention was made by such other inventor and not abandoned, suppressed, or concealed, or (2) before

such person's invention thereof, the invention was made in this country by another inventor who had not abandoned, suppressed, or concealed it. In determining priority of invention under this subsection, there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time prior to conception by the other.

[§ 103. Conditions for patentability; non-obvious subject matter

[(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

[(b)(1) Notwithstanding subsection (a), and upon timely election by the applicant for patent to proceed under this subsection, a biotechnological process using or resulting in a composition of matter that is novel under section 102 and nonobvious under subsection (a) of this section shall be considered nonobvious if—

[(A) claims to the process and the composition of matter are contained in either the same application for patent or in separate applications having the same effective filing date; and

[(B) the composition of matter, and the process at the time it was invented, were owned by the same person or subject to an obligation of assignment to the same person.

[(2) A patent issued on a process under paragraph (1)—

[(A) shall also contain the claims to the composition of matter used in or made by that process, or

[(B) shall, if such composition of matter is claimed in another patent, be set to expire on the same date as such other patent, notwithstanding section 154.

[(3) For purposes of paragraph (1), the term "biotechnological process" means—

[(A) a process of genetically altering or otherwise inducing a single- or multi-celled organism to—

[(i) express an exogenous nucleotide sequence,

[(ii) inhibit, eliminate, augment, or alter expression of an endogenous nucleotide sequence, or

[(iii) express a specific physiological characteristic not naturally associated with said organism;

[(B) cell fusion procedures yielding a cell line that expresses a specific protein, such as a monoclonal antibody; and

[(C) a method of using a product produced by a process defined by subparagraph (A) or (B), or a combination of subparagraphs (A) and (B).

[(c)(1) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by

the same person or subject to an obligation of assignment to the same person.

[(2) For purposes of this subsection, subject matter developed by another person and a claimed invention shall be deemed to have been owned by the same person or subject to an obligation of assignment to the same person if—

[(A) the claimed invention was made by or on behalf of parties to a joint research agreement that was in effect on or before the date the claimed invention was made;

[(B) the claimed invention was made as a result of activities undertaken within the scope of the joint research agreement; and

[(C) the application for patent for the claimed invention discloses or is amended to disclose the names of the parties to the joint research agreement.

[(3) For purposes of paragraph (2), the term "joint research agreement" means a written contract, grant, or cooperative agreement entered into by two or more persons or entities for the performance of experimental, developmental, or research work in the field of the claimed invention.

[§ 104. Invention made abroad

[(a) IN GENERAL.—

[(1) PROCEEDINGS.—In proceedings in the Patent and Trademark Office, in the courts, and before any other competent authority, an applicant for a patent, or a patentee, may not establish a date of invention by reference to knowledge or use thereof, or other activity with respect thereto, in a foreign country other than a NAFTA country or a WTO member country, except as provided in sections 119 and 365 of this title.

[(2) RIGHTS.—If an invention was made by a person, civil or military—

[(A) while domiciled in the United States, and serving in any other country in connection with operations by or on behalf of the United States,

[(B) while domiciled in a NAFTA country and serving in another country in connection with operations by or on behalf of that NAFTA country, or

[(C) while domiciled in a WTO member country and serving in another country in connection with operations by or on behalf of that WTO member country,

that person shall be entitled to the same rights of priority in the United States with respect to such invention as if such invention had been made in the United States, that NAFTA country, or that WTO member country, as the case may be.

[(3) USE OF INFORMATION.—To the extent that any information in a NAFTA country or a WTO member country concerning knowledge, use, or other activity relevant to proving or disproving a date of invention has not been made available for use in a proceeding in the Patent and Trademark Office, a court, or any other competent authority to the same extent as such information could be made available in the United States, the Director, court, or such other authority shall draw appropriate inferences, or take other action permitted by statute,

rule, or regulation, in favor of the party that requested the information in the proceeding.

[(b) DEFINITIONS.—As used in this section—

[(1) the term "NAFTA country" has the meaning given that term in section 2(4) of the North American Free Trade Agreement Implementation Act; and

[(2) the term "WTO member country" has the meaning given that term in section 2(10) of the Uruguay Round Agreements Act.]

§ 102. Conditions for patentability; novelty

(a) NOVELTY; PRIOR ART.—A person shall be entitled to a patent unless—

(1) the claimed invention was patented, described in a printed publication, or in public use, on sale, or otherwise available to the public before the effective filing date of the claimed invention; or

(2) the claimed invention was described in a patent issued under section 151, or in an application for patent published or deemed published under section 122(b), in which the patent or application, as the case may be, names another inventor and was effectively filed before the effective filing date of the claimed invention.

(b) EXCEPTIONS.—

(1) DISCLOSURES MADE 1 YEAR OR LESS BEFORE THE EFFECTIVE FILING DATE OF THE CLAIMED INVENTION.—A disclosure made 1 year or less before the effective filing date of a claimed invention shall not be prior art to the claimed invention under subsection (a)(1) if—

(A) the disclosure was made by the inventor or joint inventor or by another who obtained the subject matter disclosed directly or indirectly from the inventor or a joint inventor; or

(B) the subject matter disclosed had, before such disclosure, been publicly disclosed by the inventor or a joint inventor or another who obtained the subject matter disclosed directly or indirectly from the inventor or a joint inventor.

(2) DISCLOSURES APPEARING IN APPLICATIONS AND PATENTS.—A disclosure shall not be prior art to a claimed invention under subsection (a)(2) if—

(A) the subject matter disclosed was obtained directly or indirectly from the inventor or a joint inventor;

(B) the subject matter disclosed had, before such subject matter was effectively filed under subsection (a)(2), been publicly disclosed by the inventor or a joint inventor or another who obtained the subject matter disclosed directly or indirectly from the inventor or a joint inventor; or

(C) the subject matter disclosed and the claimed invention, not later than the effective filing date of the claimed invention, were owned by the same person or subject to an obligation of assignment to the same person.

(c) COMMON OWNERSHIP UNDER JOINT RESEARCH AGREEMENTS.—Subject matter disclosed and a claimed invention shall be deemed to have been owned by the same person or subject to an obli-

gation of assignment to the same person in applying the provisions of subsection (b)(2)(C) if—

(1) the subject matter disclosed was developed and the claimed invention was made by, or on behalf of, 1 or more parties to a joint research agreement that was in effect on or before the effective filing date of the claimed invention;

(2) the claimed invention was made as a result of activities undertaken within the scope of the joint research agreement; and

(3) the application for patent for the claimed invention discloses or is amended to disclose the names of the parties to the joint research agreement.

(d) PATENTS AND PUBLISHED APPLICATIONS EFFECTIVE AS PRIOR ART.—For purposes of determining whether a patent or application for patent is prior art to a claimed invention under subsection (a)(2), such patent or application shall be considered to have been effectively filed, with respect to any subject matter described in the patent or application—

(1) if paragraph (2) does not apply, as of the actual filing date of the patent or the application for patent; or

(2) if the patent or application for patent is entitled to claim a right of priority under section 119, 365(a), or 365(b), or to claim the benefit of an earlier filing date under section 120, 121, or 365(c), based upon 1 or more prior filed applications for patent, as of the filing date of the earliest such application that describes the subject matter.

§ 103. Conditions for patentability; non-obvious subject matter

A patent for a claimed invention may not be obtained, notwithstanding that the claimed invention is not identically disclosed as set forth in section 102, if the differences between the claimed invention and the prior art are such that the claimed invention as a whole would have been obvious before the effective filing date of the claimed invention to a person having ordinary skill in the art to which the claimed invention pertains. Patentability shall not be negated by the manner in which the invention was made.

CHAPTER 11—APPLICATION FOR PATENT

Sec.
111. Application.
* * * * * * *
[115. Oath of applicant.]
115. Inventor's oath or declaration.
* * * * * * *
123. Micro entity defined.

§ 111. Application

(a) IN GENERAL.—

(1) * * *

(2) CONTENTS.—Such application shall include—

(A) a specification as prescribed by section 112 [of this title];

(B) a drawing as prescribed by section 113 [of this title]; and

(C) an oath [by the applicant] *or declaration* as prescribed by section 115 [of this title].

(3) FEE AND OATH *OR DECLARATION*.—The application must be accompanied by the fee required by law. The fee and oath *or declaration* may be submitted after the specification and any required drawing are submitted, within such period and under such conditions, including the payment of a surcharge, as may be prescribed by the Director.

(4) FAILURE TO SUBMIT.—Upon failure to submit the fee and oath *or declaration* within such prescribed period, the application shall be regarded as abandoned, unless it is shown to the satisfaction of the Director that the delay in submitting the fee and oath *or declaration* was unavoidable or unintentional. The filing date of an application shall be the date on which the specification and any required drawing are received in the Patent and Trademark Office.

(b) PROVISIONAL APPLICATION.—

(1) AUTHORIZATION.—A provisional application for patent shall be made or authorized to be made by the inventor, except as otherwise provided in this title, in writing to the Director. Such application shall include—

(A) a specification as prescribed by [the first paragraph of section 112 of this title] *section 112(a)*; and

(B) a drawing as prescribed by section 113 [of this title].

(2) CLAIM.—A claim, as required by [the second through fifth paragraphs of section 112,] *subsections (b) through (e) of section 112,* shall not be required in a provisional application.

* * * * * * *

(5) ABANDONMENT.—Notwithstanding the absence of a claim, upon timely request and as prescribed by the Director, a provisional application may be treated as an application filed under subsection (a). Subject to section 119(e)(3) [of this title], if no such request is made, the provisional application shall be regarded as abandoned 12 months after the filing date of such application and shall not be subject to revival after such 12-month period.

(6) OTHER BASIS FOR PROVISIONAL APPLICATION.—Subject to all the conditions in this subsection and section 119(e) [of this title], and as prescribed by the Director, an application for patent filed under subsection (a) may be treated as a provisional application for patent.

(7) NO RIGHT OF PRIORITY OR BENEFIT OF EARLIEST FILING DATE.—A provisional application shall not be entitled to the right of priority of any other application under section 119 or 365(a) [of this title] or to the benefit of an earlier filing date in the United States under section 120, 121, or 365(c) [of this title].

(8) APPLICABLE PROVISIONS.—The provisions of this title relating to applications for patent shall apply to provisional applications for patent, except as otherwise provided, and except that provisional applications for patent shall not be subject to [sections 115, 131, 135, and 157 of this title] *sections 131 and 135*.

§ 112. Specification

(a) IN GENERAL.—The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor [of carrying out his invention] *or joint inventor of carrying out the invention*.

(b) CONCLUSION.—The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the [applicant regards as his invention] *inventor or a joint inventor regards as the invention*.

(c) FORM.—A claim may be written in independent or, if the nature of the case admits, in dependent or multiple dependent form.

[Subject to the following paragraph,] *(d) REFERENCE IN DEPENDENT FORMS.—Subject to subsection (e),* a claim in dependent form shall contain a reference to a claim previously set forth and then specify a further limitation of the subject matter claimed. A claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers.

(e) REFERENCE IN MULTIPLE DEPENDENT FORM.—A claim in multiple dependent form shall contain a reference, in the alternative only, to more than one claim previously set forth and then specify a further limitation of the subject matter claimed. A multiple dependent claim shall not serve as a basis for any other multiple dependent claim. A multiple dependent claim shall be construed to incorporate by reference all the limitations of the particular claim in relation to which it is being considered.

(f) ELEMENT IN CLAIM FOR A COMBINATION.—An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

* * * * * * *

[§ 115. Oath of applicant

[The applicant shall make oath that he believes himself to be the original and first inventor of the process, machine, manufacture, or composition of matter, or improvement thereof, for which he solicits a patent; and shall state of what country he is a citizen. Such oath may be made before any person within the United States authorized by law to administer oaths, or, when, made in a foreign country, before any diplomatic or consular officer of the United States authorized to administer oaths, or before any officer having an official seal and authorized to administer oaths in the foreign country in which the applicant may be, whose authority is proved by certificate of a diplomatic or consular officer of the United States, or apostille of an official designated by a foreign country which, by treaty or convention, accords like effect to apostilles of designated officials in the United States, and such oath shall be valid if it complies with the laws of the state or coun-

try where made. When the application is made as provided in this title by a person other than the inventor, the oath may be so varied in form that it can be made by him. For purposes of this section, a consular officer shall include any United States citizen serving overseas, authorized to perform notarial functions pursuant to section 1750 of the Revised Statutes, as amended (22 U.S.C. 4221).]

§ 115. Inventor's oath or declaration

(a) NAMING THE INVENTOR; INVENTOR'S OATH OR DECLARATION.—An application for patent that is filed under section 111(a) or commences the national stage under section 371 shall include, or be amended to include, the name of the inventor for any invention claimed in the application. Except as otherwise provided in this section, each individual who is the inventor or a joint inventor of a claimed invention in an application for patent shall execute an oath or declaration in connection with the application.

(b) REQUIRED STATEMENTS.—An oath or declaration under subsection (a) shall contain statements that—

(1) the application was made or was authorized to be made by the affiant or declarant; and

(2) such individual believes himself or herself to be the original inventor or an original joint inventor of a claimed invention in the application.

(c) ADDITIONAL REQUIREMENTS.—The Director may specify additional information relating to the inventor and the invention that is required to be included in an oath or declaration under subsection (a).

(d) SUBSTITUTE STATEMENT.—

(1) IN GENERAL.—In lieu of executing an oath or declaration under subsection (a), the applicant for patent may provide a substitute statement under the circumstances described in paragraph (2) and such additional circumstances that the Director may specify by regulation.

(2) PERMITTED CIRCUMSTANCES.—A substitute statement under paragraph (1) is permitted with respect to any individual who—

(A) is unable to file the oath or declaration under subsection (a) because the individual—

(i) is deceased;

(ii) is under legal incapacity; or

(iii) cannot be found or reached after diligent effort; or

(B) is under an obligation to assign the invention but has refused to make the oath or declaration required under subsection (a).

(3) CONTENTS.—A substitute statement under this subsection shall—

(A) identify the individual with respect to whom the statement applies;

(B) set forth the circumstances representing the permitted basis for the filing of the substitute statement in lieu of the oath or declaration under subsection (a); and

(C) contain any additional information, including any showing, required by the Director.

(e) MAKING REQUIRED STATEMENTS IN ASSIGNMENT OF RECORD.—An individual who is under an obligation of assignment of an application for patent may include the required statements under subsections (b) and (c) in the assignment executed by the individual, in lieu of filing such statements separately.

(f) TIME FOR FILING.—A notice of allowance under section 151 may be provided to an applicant for patent only if the applicant for patent has filed each required oath or declaration under subsection (a) or has filed a substitute statement under subsection (d) or recorded an assignment meeting the requirements of subsection (e).

(g) EARLIER-FILED APPLICATION CONTAINING REQUIRED STATEMENTS OR SUBSTITUTE STATEMENT.—

(1) EXCEPTION.—The requirements under this section shall not apply to an individual with respect to an application for patent in which the individual is named as the inventor or a joint inventor and who claims the benefit under section 120, 121, or 365(c) of the filing of an earlier-filed application, if—

(A) an oath or declaration meeting the requirements of subsection (a) was executed by the individual and was filed in connection with the earlier-filed application;

(B) a substitute statement meeting the requirements of subsection (d) was filed in connection with the earlier filed application with respect to the individual; or

(C) an assignment meeting the requirements of subsection (e) was executed with respect to the earlier-filed application by the individual and was recorded in connection with the earlier-filed application.

(2) COPIES OF OATHS, DECLARATIONS, STATEMENTS, OR ASSIGNMENTS.—Notwithstanding paragraph (1), the Director may require that a copy of the executed oath or declaration, the substitute statement, or the assignment filed in connection with the earlier-filed application be included in the later-filed application.

(h) SUPPLEMENTAL AND CORRECTED STATEMENTS; FILING ADDITIONAL STATEMENTS.—

(1) IN GENERAL.—Any person making a statement required under this section may withdraw, replace, or otherwise correct the statement at any time. If a change is made in the naming of the inventor requiring the filing of 1 or more additional statements under this section, the Director shall establish regulations under which such additional statements may be filed.

(2) SUPPLEMENTAL STATEMENTS NOT REQUIRED.—If an individual has executed an oath or declaration meeting the requirements of subsection (a) or an assignment meeting the requirements of subsection (e) with respect to an application for patent, the Director may not thereafter require that individual to make any additional oath, declaration, or other statement equivalent to those required by this section in connection with the application for patent or any patent issuing thereon.

(3) SAVINGS CLAUSE.—A patent shall not be invalid or unenforceable based upon the failure to comply with a requirement under this section if the failure is remedied as provided under paragraph (1).

(i) ACKNOWLEDGMENT OF PENALTIES.—Any declaration or statement filed pursuant to this section shall contain an acknowledg-

ment that any willful false statement made in such declaration or statement is punishable under section 1001 of title 18 by fine or imprisonment of not more than 5 years, or both.

§ 116. Inventors

(a) JOINT INVENTIONS.—When an invention is made by two or more persons jointly, they shall apply for patent jointly and each make the required oath, except as otherwise provided in this title. Inventors may apply for a patent jointly even though (1) they did not physically work together or at the same time, (2) each did not make the same type or amount of contribution, or (3) each did not make a contribution to the subject matter of every claim of the patent.

(b) *OMITTED INVENTOR.*—If a joint inventor refuses to join in an application for patent or cannot be found or reached after diligent effort, the application may be made by the other inventor on behalf of himself and the omitted inventor. The Director, on proof of the pertinent facts and after such notice to the omitted inventor as he prescribes, may grant a patent to the inventor making the application, subject to the same rights which the omitted inventor would have had if he had been joined. The omitted inventor may subsequently join in the application.

(c) CORRECTION OF ERRORS IN APPLICATION.—Whenever through error a person is named in an application for patent as the inventor, or through error an inventor is not named in an application, **[**and such error arose without any deceptive intention on his part,**]** the Director may permit the application to be amended accordingly, under such terms as he prescribes.

* * * * * * *

[§ 118. Filing by other than inventor

[Whenever an inventor refuses to execute an application for patent, or cannot be found or reached after diligent effort, a person to whom the inventor has assigned or agreed in writing to assign the invention or who otherwise shows sufficient proprietary interest in the matter justifying such action, may make application for patent on behalf of and as agent for the inventor on proof of the pertinent facts and a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage; and the Director may grant a patent to such inventor upon such notice to him as the Director deems sufficient, and on compliance with such regulations as he prescribes.**]**

§ 118. Filing by other than inventor

A person to whom the inventor has assigned or is under an obligation to assign the invention may make an application for patent. A person who otherwise shows sufficient proprietary interest in the matter may make an application for patent on behalf of and as agent for the inventor on proof of the pertinent facts and a showing that such action is appropriate to preserve the rights of the parties. If the Director grants a patent on an application filed under this section by a person other than the inventor, the patent shall be granted to the real party in interest and upon such notice to the inventor as the Director considers to be sufficient.

§ 119. Benefit of earlier filing date; right of priority

(a) An application for patent for an invention filed in this country by any person who has, or whose legal representatives or assigns have, previously regularly filed an application for a patent for the same invention in a foreign country which affords similar privileges in the case of applications filed in the United States or to citizens of the United States, or in a WTO member country, shall have the same effect as the same application would have if filed in this country on the date on which the application for patent for the same invention was first filed in such foreign country, if the application in this country is filed within twelve months from the earliest date on which such foreign application was filed[; but no patent shall be granted on any application for patent for an invention which had been patented or described in a printed publication in any country more than one year before the date of the actual filing of the application in this country, or which had been in public use or on sale in this country more than one year prior to such filing].

* * * * * * *

(e)(1) An application for patent filed under section 111(a) or section 363 [of this title] for an invention disclosed in the manner provided by [the first paragraph of section 112 of this title] *section 112(a) (other than the requirement to disclose the best mode)* in a provisional application filed under section 111(b) [of this title], by an inventor or inventors named in the provisional application, shall have the same effect, as to such invention, as though filed on the date of the provisional application filed under section 111(b) [of this title], if the application for patent filed under section 111(a) or section 363 [of this title] is filed not later than 12 months after the date on which the provisional application was filed and if it contains or is amended to contain a specific reference to the provisional application. No application shall be entitled to the benefit of an earlier filed provisional application under this subsection unless an amendment containing the specific reference to the earlier filed provisional 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 subsection. The Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed submission of an amendment under this subsection during the pendency of the application.

(2) A provisional application filed under section 111(b) [of this title] may not be relied upon in any proceeding in the Patent and Trademark Office unless the fee set forth in subparagraph (A) or (C) of section 41(a)(1) [of this title] has been paid.

* * * * * * *

(g) As used in this section—

(1) the term "WTO member country" has the same meaning as the term is defined in section 104(b)(2) [of this title]; and

* * * * * * *

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

An application for patent for an invention disclosed in the manner provided by [the first paragraph of section 112 of this title] *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] *which names an inventor or joint inventor* 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.

§ 121. Divisional applications

If two or more independent and distinct inventions are claimed in one application, the Director may require the application to be restricted to one of the inventions. If the other invention is made the subject of a divisional application which complies with the requirements of section 120 [of this title] it shall be entitled to the benefit of the filing date of the original application. A patent issuing on an application with respect to which a requirement for restriction under this section has been made, or on an application filed as a result of such a requirement, shall not be used as a reference either in the Patent and Trademark Office or in the courts against a divisional application or against the original application or any patent issued on either of them, if the divisional application is filed before the issuance of the patent on the other application. [If a divisional application is directed solely to subject matter described and claimed in the original application as filed, the Director may dispense with signing and execution by the inventor.] The validity of a patent shall not be questioned for failure of the Director to require the application to be restricted to one invention.

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

(a) * * *

(b) PUBLICATION.—

(1) * * *

(2) EXCEPTIONS.—(A) An application shall not be published if that application is—

(i) * * *

(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].

* * * * * * *

(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].

(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.

§ 123. Micro entity defined

(a) IN GENERAL.—For purposes of this title, the term "micro entity" means an applicant who makes a certification that the applicant—

(1) qualifies as a small entity, as defined in regulations issued by the Director;

(2) has not been named as an inventor on more than 4 previously filed patent applications, other than applications filed in another country, provisional applications under section 111(b), or international applications filed under the treaty defined in section 351(a) for which the basic national fee under section 41(a) was not paid;

(3) did not, in the calendar year preceding the calendar year in which the examination fee for the application is being paid, have a gross income, as defined in section 61(a) of the Internal Revenue Code of 1986, exceeding 3 times the median household income for that preceding calendar year, as reported by the Bureau of the Census; and

(4) has not assigned, granted, or conveyed, and is not under an obligation by contract or law to assign, grant, or convey, a license or other ownership interest in the application concerned to an entity that, in the calendar year preceding the calendar year in which the examination fee for the application is being paid, had a gross income, as defined in section 61(a) of the Internal Revenue Code of 1986, exceeding 3 times the median household income for that preceding calendar year, as reported by the Bureau of the Census.

(b) APPLICATIONS RESULTING FROM PRIOR EMPLOYMENT.—An applicant is not considered to be named on a previously filed application for purposes of subsection (a)(2) if the applicant has assigned, or is under an obligation by contract or law to assign, all ownership rights in the application as the result of the applicant's previous employment.

(c) FOREIGN CURRENCY EXCHANGE RATE.—If an applicant's or entity's gross income in the preceding calendar year is not in United States dollars, the average currency exchange rate, as reported by the Internal Revenue Service, during that calendar year shall be used to determine whether the applicant's or entity's gross income exceeds the threshold specified in paragraphs (3) or (4) of subsection (a).

(d) PUBLIC INSTITUTIONS OF HIGHER EDUCATION.—

(1) IN GENERAL.—For purposes of this section, a micro entity shall include an applicant who certifies that—

(A) the applicant's employer, from which the applicant obtains the majority of the applicant's income, is an institution of higher education, as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001), that is a public institution; or

(B) the applicant has assigned, granted, conveyed, or is under an obligation by contract or law to assign, grant, or convey, a license or other ownership interest in the particular application to such public institution.

(2) DIRECTOR'S AUTHORITY.—The Director may, in the Director's discretion, impose income limits, annual filing limits, or other limits on who may qualify as a micro entity pursuant to this subsection if the Director determines that such additional limits are reasonably necessary to avoid an undue impact on other patent applicants or owners or are otherwise reasonably necessary and appropriate. At least 3 months before any limits proposed to be imposed pursuant to this paragraph take effect, the Director shall inform the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate of any such proposed limits.

CHAPTER 12—EXAMINATION OF APPLICATION

Sec.
131. Examination of application.

* * * * * * *

[134. Appeal to the Board of Patent Appeals and Interferences.
[135. Interferences.]
134. Appeal to the Patent Trial and Appeal Board.
135. Derivation proceedings.

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