

(b) The amounts of fees specified in subsection (a) of this section, except the international fee and the handling fee, shall be prescribed by the Director. He may refund any sum paid by mistake or in excess of the fees so specified, or if required under the treaty and the Regulations. The Director may also refund any part of the search fee, the national fee, the preliminary examination fee, and any additional fees, where he determines such refund to be warranted.

(Added Pub. L. 94-131, § 1, Nov. 14, 1975, 89 Stat. 690; amended Pub. L. 98-622, title IV, §§ 402(g), 403(a), Nov. 8, 1984, 98 Stat. 3392; Pub. L. 99-616, § 8, Nov. 6, 1986, 100 Stat. 3486; Pub. L. 102-204, § 5(g)(1), Dec. 10, 1991, 105 Stat. 1640; Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4732(a)(10)(A)], Nov. 29, 1999, 113 Stat. 1536, 1501A-582; Pub. L. 107-273, div. C, title III, § 13206(a)(21), (b)(1)(B), Nov. 2, 2002, 116 Stat. 1905, 1906.)

Editorial Notes

AMENDMENTS

2002—Subsec. (a)(1) to (3). Pub. L. 107-273, § 13206(a)(21), substituted period for semicolon at end.

Subsecs. (a)(5), (b). Pub. L. 107-273, § 13206(b)(1)(B), made technical correction to directory language of Pub. L. 106-113. See 1999 Amendment note below.

1999—Subsecs. (a)(5), (b). Pub. L. 106-113, as amended by Pub. L. 107-273, § 13206(b)(1)(B), substituted “Director” for “Commissioner” wherever appearing.

1991—Subsec. (a). Pub. L. 102-204, § 5(g)(1)(A), in introductory provisions inserted “shall charge a national fee as provided in section 41(a), and” after “Office”, redesignated pars. (5) and (6) as (4) and (5), respectively, and struck out former par. (4), which read as follows: “A national fee (see section 371(c));”.

Subsec. (b). Pub. L. 102-204, § 5(g)(1)(B), substituted “the national fee, the preliminary examination fee,” for “the preliminary examination fee”.

1986—Subsec. (a). Pub. L. 99-616, § 8(a), in introductory provisions, inserted “and the handling fee” and substituted “amounts are” for “amount is”, added par. (5), and redesignated former par. (5) as (6).

Subsec. (b). Pub. L. 99-616, § 8(b), inserted “and the handling fee” and “the preliminary examination fee and any additional fees.”.

1984—Subsec. (a). Pub. L. 98-622, § 403(a), substituted “Patent and Trademark Office” for “Patent Office” in provision preceding par. (1).

Subsec. (a)(5), (6). Pub. L. 98-622, § 402(g), redesignated par. (6) as (5). Former par. (5), which read “A special fee (to be paid when required; see section 372(c))”, was struck out.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106-113, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-616 effective July 1, 1987, and applicable to all international applications pending before or after that date, see section 9 of Pub. L. 99-616, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 402(g) of Pub. L. 98-622 effective six months after Nov. 8, 1984, see section 406(b) of Pub. L. 98-622, set out as a note under section 3 of this title.

Amendment by section 403(a) of Pub. L. 98-622 effective Nov. 8, 1984, see section 406(a) of Pub. L. 98-622, set out as a note under section 351 of this title.

EFFECTIVE DATE

Section effective Jan. 24, 1978, and applicable to international and national applications filed, on and after that date, see section 11 of Pub. L. 94-131, set out as a note under section 351 of this title.

PART V—THE HAGUE AGREEMENT CONCERNING INTERNATIONAL REGISTRATION OF INDUSTRIAL DESIGNS

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CHAPTER 38—INTERNATIONAL DESIGN APPLICATIONS

Sec.

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Editorial Notes

PRIOR PROVISIONS

A prior chapter 38, as added by Pub. L. 96-517, § 6(a), Dec. 12, 1980, 94 Stat. 3018, was originally editorially inserted after chapter 17 of this title because the probable intent of Congress was to designate the chapter as “18”, in view of the numerical designation of the sections contained in the chapter as sections 200 to 211 and in view of the subject matter of the chapter in relation to the subject matter of Part II of this title. Pub. L. 97-256, title I, § 101(5), Sept. 8, 1982, 96 Stat. 816, redesignated chapter 38 as chapter 18 and transferred chapter 18, as so redesignated, from the end of this part to the end of Part II. See 1982 Amendment note set out under the analysis of chapter 18 (§ 200 et seq.) of this title.

§ 381. Definitions

(a) IN GENERAL.—When used in this part, unless the context otherwise indicates—

(1) the term “treaty” means the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs adopted at Geneva on July 2, 1999;

(2) the term “regulations”—

(A) when capitalized, means the Common Regulations under the treaty; and

(B) when not capitalized, means the regulations established by the Director under this title;

(3) the terms “designation”, “designating”, and “designate” refer to a request that an international registration have effect in a Contracting Party to the treaty;

(4) the term “International Bureau” means the international intergovernmental organization that is recognized as the coordinating body under the treaty and the Regulations;

(5) the term “effective registration date” means the date of international registration

determined by the International Bureau under the treaty;

(6) the term “international design application” means an application for international registration; and

(7) the term “international registration” means the international registration of an industrial design filed under the treaty.

(b) **RULE OF CONSTRUCTION.**—Terms and expressions not defined in this part are to be taken in the sense indicated by the treaty and the Regulations.

(Added Pub. L. 112–211, title I, §101(a), Dec. 18, 2012, 126 Stat. 1527.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective on the later of the date that is 1 year after Dec. 18, 2012, or the date that the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs enters into force with respect to the United States (May 13, 2015), and applicable only to certain applications filed on and after that effective date and patents issuing thereon, see section 103 of Pub. L. 112–211, set out as an Effective Date of 2012 Amendment note under section 100 of this title.

§ 382. Filing international design applications

(a) **IN GENERAL.**—Any person who is a national of the United States, or has a domicile, a habitual residence, or a real and effective industrial or commercial establishment in the United States, may file an international design application by submitting to the Patent and Trademark Office an application in such form, together with such fees, as may be prescribed by the Director.

(b) **REQUIRED ACTION.**—The Patent and Trademark Office shall perform all acts connected with the discharge of its duties under the treaty, including the collection of international fees and transmittal thereof to the International Bureau. Subject to chapter 17, international design applications shall be forwarded by the Patent and Trademark Office to the International Bureau, upon payment of a transmittal fee.

(c) **APPLICABILITY OF CHAPTER 16.**—Except as otherwise provided in this chapter, the provisions of chapter 16 shall apply.

(d) **APPLICATION FILED IN ANOTHER COUNTRY.**—An international design application on an industrial design made in this country shall be considered to constitute the filing of an application in a foreign country within the meaning of chapter 17 if the international design application is filed—

- (1) in a country other than the United States;
- (2) at the International Bureau; or
- (3) with an intergovernmental organization.

(Added Pub. L. 112–211, title I, §101(a), Dec. 18, 2012, 126 Stat. 1528.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective on the later of the date that is 1 year after Dec. 18, 2012, or the date that the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs enters into force

with respect to the United States (May 13, 2015), and applicable only to certain applications filed on and after that effective date and patents issuing thereon, see section 103 of Pub. L. 112–211, set out as an Effective Date of 2012 Amendment note under section 100 of this title.

§ 383. International design application

In addition to any requirements pursuant to chapter 16, the international design application shall contain—

- (1) a request for international registration under the treaty;
- (2) an indication of the designated Contracting Parties;
- (3) data concerning the applicant as prescribed in the treaty and the Regulations;
- (4) copies of a reproduction or, at the choice of the applicant, of several different reproductions of the industrial design that is the subject of the international design application, presented in the number and manner prescribed in the treaty and the Regulations;
- (5) an indication of the product or products that constitute the industrial design or in relation to which the industrial design is to be used, as prescribed in the treaty and the Regulations;
- (6) the fees prescribed in the treaty and the Regulations; and
- (7) any other particulars prescribed in the Regulations.

(Added Pub. L. 112–211, title I, §101(a), Dec. 18, 2012, 126 Stat. 1528.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective on the later of the date that is 1 year after Dec. 18, 2012, or the date that the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs enters into force with respect to the United States (May 13, 2015), and applicable only to certain applications filed on and after that effective date and patents issuing thereon, see section 103 of Pub. L. 112–211, set out as an Effective Date of 2012 Amendment note under section 100 of this title.

§ 384. Filing date

(a) **IN GENERAL.**—Subject to subsection (b), the filing date of an international design application in the United States shall be the effective registration date. Notwithstanding the provisions of this part, any international design application designating the United States that otherwise meets the requirements of chapter 16 may be treated as a design application under chapter 16.

(b) **REVIEW.**—An applicant may request review by the Director of the filing date of the international design application in the United States. The Director may determine that the filing date of the international design application in the United States is a date other than the effective registration date. The Director may establish procedures, including the payment of a surcharge, to review the filing date under this section. Such review may result in a determination that the application has a filing date in the United States other than the effective registration date.

(Added Pub. L. 112–211, title I, §101(a), Dec. 18, 2012, 126 Stat. 1529.)

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE**

Section effective on the later of the date that is 1 year after Dec. 18, 2012, or the date that the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs enters into force with respect to the United States (May 13, 2015), and applicable only to certain applications filed on and after that effective date and patents issuing thereon, see section 103 of Pub. L. 112-211, set out as an Effective Date of 2012 Amendment note under section 100 of this title.

§ 385. Effect of international design application

An international design application designating the United States shall have the effect, for all purposes, from its filing date determined in accordance with section 384, of an application for patent filed in the Patent and Trademark Office pursuant to chapter 16.

(Added Pub. L. 112-211, title I, §101(a), Dec. 18, 2012, 126 Stat. 1529.)

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE**

Section effective on the later of the date that is 1 year after Dec. 18, 2012, or the date that the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs enters into force with respect to the United States (May 13, 2015), and applicable only to certain applications filed on and after that effective date and patents issuing thereon, see section 103 of Pub. L. 112-211, set out as an Effective Date of 2012 Amendment note under section 100 of this title.

§ 386. Right of priority

(a) NATIONAL APPLICATION.—In accordance with the conditions and requirements of subsections (a) through (d) of section 119 and section 172, a national application shall be entitled to the right of priority based on a prior international design application that designated at least 1 country other than the United States.

(b) PRIOR FOREIGN APPLICATION.—In accordance with the conditions and requirements of subsections (a) through (d) of section 119 and section 172 and the treaty and the Regulations, an international design application designating the United States shall be entitled to the right of priority based on a prior foreign application, a prior international application as defined in section 351(c) designating at least 1 country other than the United States, or a prior international design application designating at least 1 country other than the United States.

(c) PRIOR NATIONAL APPLICATION.—In accordance with the conditions and requirements of section 120, an international design application designating the United States shall be entitled to the benefit of the filing date of a prior national application, a prior international application as defined in section 351(c) designating the United States, or a prior international design application designating the United States, and a national application shall be entitled to the benefit of the filing date of a prior international design application designating the United States. If any claim for the benefit of an earlier filing date is based on a prior international application as defined in section 351(c) which designated but did not originate in the United

States or a prior international design application which designated but did not originate in the United States, the Director may require the filing in the Patent and Trademark Office of a certified copy of such application together with a translation thereof into the English language, if it was filed in another language.

(Added Pub. L. 112-211, title I, §101(a), Dec. 18, 2012, 126 Stat. 1529.)

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE**

Section effective on the later of the date that is 1 year after Dec. 18, 2012, or the date that the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs enters into force with respect to the United States (May 13, 2015), and applicable only to certain applications filed on and after that effective date and patents issuing thereon, see section 103 of Pub. L. 112-211, set out as an Effective Date of 2012 Amendment note under section 100 of this title.

§ 387. Relief from prescribed time limits

An applicant's failure to act within prescribed time limits in connection with requirements pertaining to an international design application may be excused as to the United States upon a showing satisfactory to the Director of unintentional delay and under such conditions, including a requirement for payment of the fee specified in section 41(a)(7), as may be prescribed by the Director.

(Added Pub. L. 112-211, title I, §101(a), Dec. 18, 2012, 126 Stat. 1530.)

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE**

Section effective on the later of the date that is 1 year after Dec. 18, 2012, or the date that the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs enters into force with respect to the United States (May 13, 2015), and applicable only to certain applications filed on and after that effective date and patents issuing thereon, see section 103 of Pub. L. 112-211, set out as an Effective Date of 2012 Amendment note under section 100 of this title.

§ 388. Withdrawn or abandoned international design application

Subject to sections 384 and 387, if an international design application designating the United States is withdrawn, renounced or canceled or considered withdrawn or abandoned, either generally or as to the United States, under the conditions of the treaty and the Regulations, the designation of the United States shall have no effect after the date of withdrawal, renunciation, cancellation, or abandonment and shall be considered as not having been made, unless a claim for benefit of a prior filing date under section 386(c) was made in a national application, or an international design application designating the United States, or a claim for benefit under section 365(c) was made in an international application designating the United States, filed before the date of such withdrawal, renunciation, cancellation, or abandonment. However, such withdrawn, renounced, canceled, or abandoned international design application

may serve as the basis for a claim of priority under subsections (a) and (b) of section 386, or under subsection (a) or (b) of section 365, if it designated a country other than the United States.

(Added Pub. L. 112-211, title I, §101(a), Dec. 18, 2012, 126 Stat. 1530.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective on the later of the date that is 1 year after Dec. 18, 2012, or the date that the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs enters into force with respect to the United States (May 13, 2015), and applicable only to certain applications filed on and after that effective date and patents issuing thereon, see section 103 of Pub. L. 112-211, set out as an Effective Date of 2012 Amendment note under section 100 of this title.

§ 389. Examination of international design application

(a) IN GENERAL.—The Director shall cause an examination to be made pursuant to this title of an international design application designating the United States.

(b) APPLICABILITY OF CHAPTER 16.—All questions of substance and, unless otherwise required by the treaty and Regulations, procedures regarding an international design application designating the United States shall be determined as in the case of applications filed under chapter 16.

(c) FEES.—The Director may prescribe fees for filing international design applications, for designating the United States, and for any other processing, services, or materials relating to international design applications, and may provide for later payment of such fees, including surcharges for later submission of fees.

(d) ISSUANCE OF PATENT.—The Director may issue a patent based on an international design

application designating the United States, in accordance with the provisions of this title. Such patent shall have the force and effect of a patent issued on an application filed under chapter 16.

(Added Pub. L. 112-211, title I, §101(a), Dec. 18, 2012, 126 Stat. 1530.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective on the later of the date that is 1 year after Dec. 18, 2012, or the date that the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs enters into force with respect to the United States (May 13, 2015), and applicable only to certain applications filed on and after that effective date and patents issuing thereon, see section 103 of Pub. L. 112-211, set out as an Effective Date of 2012 Amendment note under section 100 of this title.

§ 390. Publication of international design application

The publication under the treaty of an international design application designating the United States shall be deemed a publication under section 122(b).

(Added Pub. L. 112-211, title I, §101(a), Dec. 18, 2012, 126 Stat. 1531.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective on the later of the date that is 1 year after Dec. 18, 2012, or the date that the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs enters into force with respect to the United States (May 13, 2015), and applicable only to certain applications filed on and after that effective date and patents issuing thereon, see section 103 of Pub. L. 112-211, set out as an Effective Date of 2012 Amendment note under section 100 of this title.