

35 USC 2: Powers and duties

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From Title 35-PATENTS

PART I-UNITED STATES PATENT AND TRADEMARK OFFICE
CHAPTER 1-ESTABLISHMENT, OFFICERS AND EMPLOYEES, FUNCTIONS

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§2. Powers and duties

(a) IN GENERAL.-The United States Patent and Trademark Office, subject to the policy direction of the Secretary of Commerce-

- (1) shall be responsible for the granting and issuing of patents and the registration of trademarks; and
- (2) shall be responsible for disseminating to the public information with respect to patents and trademarks.

(b) SPECIFIC POWERS.-The Office-

- (1) shall adopt and use a seal of the Office, which shall be judicially noticed and with which letters patent, certificates of trademark registrations, and papers issued by the Office shall be authenticated;
- (2) may establish regulations, not inconsistent with law, which-
 - (A) shall govern the conduct of proceedings in the Office;
 - (B) shall be made in accordance with section 553 of title 5;
 - (C) shall facilitate and expedite the processing of patent applications, particularly those which can be filed, stored, processed, searched, and retrieved electronically, subject to the provisions of section 122 relating to the confidential status of applications;
 - (D) may govern the recognition and conduct of agents, attorneys, or other persons representing applicants or other parties before the Office, and may require them, before being recognized as representatives of applicants or other persons, to show that they are of good moral character and reputation and are possessed of the necessary qualifications to render to applicants or other persons valuable service, advice, and assistance in the presentation or prosecution of their applications or other business before the Office;
 - (E) shall recognize the public interest in continuing to safeguard broad access to the United States patent system through the reduced fee structure for small entities under section 41(h)(1);
 - (F) provide for the development of a performance-based process that includes quantitative and qualitative measures and standards for evaluating cost-effectiveness and is consistent with the principles of impartiality and competitiveness; and
 - (G) may, subject to any conditions prescribed by the Director and at the request of the patent applicant, provide for prioritization of examination of applications for products, processes, or technologies that are important to the national economy or national competitiveness without recovering the aggregate extra cost of providing such prioritization, notwithstanding section 41 or any other provision of law;

(3) may acquire, construct, purchase, lease, hold, manage, operate, improve, alter, and renovate any real, personal, or mixed property, or any interest therein, as it considers necessary to carry out its functions;

(4)(A) may make such purchases, contracts for the construction, maintenance, or management and operation of facilities, and contracts for supplies or services, without regard to the provisions of subtitle I and chapter 33 of title 40, division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41, and the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 et seq.); and

(B) may enter into and perform such purchases and contracts for printing services, including the process of composition, platemaking, presswork, silk screen processes, binding, microform, and the products of such processes, as it considers necessary to carry out the functions of the Office, without regard to sections 501 through 517 and 1101 through 1123 of title 44;

(5) may use, with their consent, services, equipment, personnel, and facilities of other departments, agencies, and instrumentalities of the Federal Government, on a reimbursable basis, and cooperate with such other departments, agencies, and instrumentalities in the establishment and use of services, equipment, and facilities of the Office;

(6) may, when the Director determines that it is practicable, efficient, and cost-effective to do so, use, with the consent of the United States and the agency, instrumentality, Patent and Trademark Office, or international organization concerned, the services, records, facilities, or personnel of any State or local government agency or instrumentality or foreign patent and trademark office or international organization to perform functions on its behalf;

(7) may retain and use all of its revenues and receipts, including revenues from the sale, lease, or disposal of any real, personal, or mixed property, or any interest therein, of the Office;

(8) shall advise the President, through the Secretary of Commerce, on national and certain international intellectual property policy issues;

(9) shall advise Federal departments and agencies on matters of intellectual property policy in the United States and intellectual property protection in other countries;

(10) shall provide guidance, as appropriate, with respect to proposals by agencies to assist foreign governments and international intergovernmental organizations on matters of intellectual property protection;

(11) may conduct programs, studies, or exchanges of items or services regarding domestic and international intellectual property law and the effectiveness of intellectual property protection domestically and throughout the world, and the Office is authorized to expend funds to cover the subsistence expenses and travel-related expenses, including per diem, lodging costs, and transportation costs, of persons attending such programs who are not Federal employees;

(12)(A) shall advise the Secretary of Commerce on programs and studies relating to intellectual property policy that are conducted, or authorized to be conducted, cooperatively with foreign intellectual property offices and international intergovernmental organizations; and

(B) may conduct programs and studies described in subparagraph (A); and

(13)(A) in coordination with the Department of State, may conduct programs and studies cooperatively with foreign intellectual property offices and international intergovernmental organizations; and

(B) with the concurrence of the Secretary of State, may authorize the transfer of not to exceed \$100,000 in any year to the Department of State for the purpose of making special payments to international intergovernmental organizations for studies and programs for advancing international cooperation concerning patents, trademarks, and other matters.

(c) **CLARIFICATION OF SPECIFIC POWERS.**-(1) The special payments under subsection (b)(13)(B) shall be in addition to any other payments or contributions to international organizations described in subsection (b)(13)(B) and shall not be subject to any limitations imposed by law on the amounts of such other payments or contributions by the United States Government.

(2) Nothing in subsection (b) shall derogate from the duties of the Secretary of State or from the duties of the United States Trade Representative as set forth in section 141 of the Trade Act of 1974 (19 U.S.C. 2171).

(3) Nothing in subsection (b) shall derogate from the duties and functions of the Register of Copyrights or otherwise alter current authorities relating to copyright matters.

(4) In exercising the Director's powers under paragraphs (3) and (4)(A) of subsection (b), the Director shall consult with the Administrator of General Services.

(5) In exercising the Director's powers and duties under this section, the Director shall consult with the Register of Copyrights on all copyright and related matters.

(d) **CONSTRUCTION.**-Nothing in this section shall be construed to nullify, void, cancel, or interrupt any pending request-for-proposal let or contract issued by the General Services Administration for the specific purpose of relocating or leasing space to the United States Patent and Trademark Office.

(July 19, 1952, ch. 950, 66 Stat. 792 ; Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949 ; Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4712], Nov. 29, 1999, 113 Stat. 1536 , 1501A-572; Pub. L. 106-400, §2, Oct. 30, 2000, 114 Stat. 1675 ; Pub. L. 107-273, div. C, title III, §13206(a)(1), Nov. 2, 2002, 116 Stat. 1904 ; Pub. L. 108-178, §4(g), Dec. 15, 2003, 117 Stat. 2641 ; Pub. L. 111-350, §5(i)(1), Jan. 4, 2011, 124 Stat. 3849 ; Pub. L. 112-29, §§20(j), 21(a), 25, Sept. 16, 2011, 125 Stat. 335 , 337.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §3 (R.S. 478).

"Certificates of trade-mark registrations" is added, see note under section 1. Changes in language are made and the specific date eliminated.

EDITORIAL NOTES

REFERENCES IN TEXT

The McKinney-Vento Homeless Assistance Act, referred to in subsec. (b)(4)(A), is Pub. L. 100-77, July 22, 1987, 101 Stat. 482 , which is classified principally to chapter 119 (§11301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of Title 42 and Tables.

AMENDMENTS

2011-Subsec. (b)(2)(E). Pub. L. 112-29, §20(j), struck out "of this title" after "41(h)(1)".

Subsec. (b)(2)(G). Pub. L. 112-29, §25, added subpar. (G).

Subsec. (b)(4)(A). Pub. L. 111–350 substituted "division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41" for "title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)."

Subsec. (b)(11). Pub. L. 112–29, §21(a), inserted ", and the Office is authorized to expend funds to cover the subsistence expenses and travel-related expenses, including per diem, lodging costs, and transportation costs, of persons attending such programs who are not Federal employees" after "world".

2003-Subsec. (b)(4)(A). Pub. L. 108–178 substituted "subtitle I and chapter 33 of title 40, title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)," for "the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.), the Public Buildings Act (40 U.S.C. 601 et seq.),".

2002-Subsec. (b)(2)(B), (4)(B). Pub. L. 107–273 struck out ", United States Code" before semicolon at end.

2000-Subsec. (b)(4)(A). Pub. L. 106–400 substituted "McKinney-Vento Homeless Assistance Act" for "Stewart B. McKinney Homeless Assistance Act".

1999-Pub. L. 106–113 amended section catchline and text generally. Prior to amendment, text read as follows: "The Patent and Trademark Office shall have a seal with which letters patent, certificates of trade-mark registrations, and papers issued from the Office shall be authenticated."

1975-Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112–274, §1(g), Jan. 14, 2013, 126 Stat. 2457, provided that: "Notwithstanding section 35 of the Leahy-Smith America Invents Act (35 U.S.C. 1 note), the amendments made by section 21 of the Leahy-Smith America Invents Act (Public Law 112–29; 125 Stat. 335) [amending this section and section 3 of this title] shall be effective as of September 16, 2011."

Pub. L. 112–29, §20(l), Sept. 16, 2011, 125 Stat. 335, provided that: "The amendments made by this section [amending this section and sections 3, 12, 32, 41, 103, 104, 111, 116, 119 to 123, 132, 135, 143, 145, 146, 154, 157, 162, 172, 182 to 186, 202, 207, 209, 210, 251, 253, 256, 257, 267, 282, 284, 287, 288, 291, 294, 302 to 307, 328, 363, 365, 368, and 371 to 375 of this title and repealing sections 155 and 155A of this title] shall take effect upon the expiration of the 1-year period beginning on the date of the enactment of this Act [Sept. 16, 2011] and shall apply to proceedings commenced on or after that effective date."

Except as otherwise provided in Pub. L. 112–29, amendment by Pub. L. 112–29 effective upon the expiration of the 1-year period beginning on Sept. 16, 2011, and applicable to any patent issued on or after that effective date, see section 35 of Pub. L. 112–29, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–178 effective Aug. 21, 2002, see section 5 of Pub. L. 108–178, set out as a note under section 5334 of Title 5, Government Organization and Employees.

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 1975 AMENDMENT

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

TEMPORARY AUTHORITY OF DIRECTOR OF THE USPTO DURING THE COVID–19 EMERGENCY

Pub. L. 116–136, div. B, title II, §12004, Mar. 27, 2020, 134 Stat. 517, provided that:

"(a) IN GENERAL.-During the emergency period described in subsection (e), the Director may toll, waive, adjust, or modify, any timing deadline established by title 35, United States Code, the Trademark Act, section 18 of the Leahy-Smith America Invents Act [Pub. L. 112–29] (35 U.S.C. 321 note), or regulations promulgated thereunder, in effect during such period, if the Director determines that the emergency related to such period-

"(1) materially affects the functioning of the Patent and Trademark Office;

"(2) prejudices the rights of applicants, registrants, patent owners, or others appearing before the Office; or

"(3) prevents applicants, registrants, patent owners, or others appearing before the Office from filing a document or fee with the Office.

"(b) PUBLIC NOTICE.-If the Director determines that tolling, waiving, adjusting, or modifying a timing deadline under subsection (a) is appropriate, the Director shall publish publicly a notice to such effect.

"(c) STATEMENT REQUIRED.-Not later than 20 days after the Director tolls, waives, adjusts, or modifies a timing deadline under subsection (a) and such toll, waiver, adjustment, or modification is in effect for a consecutive or cumulative period exceeding 120 days, the Director shall submit to Congress a statement describing the action taken, relevant background, and rationale for the period of tolling, waiver, adjustment, or modification.

"(d) OTHER LAWS.-Notwithstanding section 301 of the National Emergencies Act (50 U.S.C. 1631), the authority of the Director under subsection (a) is not contingent on a specification made by the President under such section or any other requirement under that Act [50 U.S.C. 1601 et seq.] (other than the emergency declaration under section 201(a) of such Act (50 U.S.C. 1621(a))). The authority described in this section supersedes the authority of title II of the National Emergencies Act (50 U.S.C. 1621 et seq.).

"(e) EMERGENCY PERIOD.-The emergency period described in this subsection includes the duration of the portion of the emergency declared by the President pursuant to the National Emergencies Act on March 13, 2020, as a result of the COVID-19 outbreak (and any renewal thereof) beginning on or after the date of the enactment of this section [Mar. 27, 2020] and the 60 day period following such duration.

"(f) RULE OF CONSTRUCTION.-Nothing in this section may be construed as limiting other statutory authorities the Director may have to grant relief regarding filings or deadlines.

"(g) SUNSET.-Notwithstanding subsection (a), the authorities provided under this section shall expire upon the expiration of the 2-year period after the date of the enactment of this section.

"(h) DEFINITIONS.-In this section:

"(1) DIRECTOR.-The term 'Director' means the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

"(2) TRADEMARK ACT.-The term 'Trademark Act' means the Act entitled 'An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes', approved July 5, 1946 (15 U.S.C. 1051 et seq.).

"(i) EMERGENCY REQUIREMENT.-The amount provided by this section is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 [2 U.S.C. 901(b)(2)(A)(i)]."

USPTO LAW SCHOOL CLINIC CERTIFICATION PROGRAM

Pub. L. 113-227, §1, Dec. 16, 2014, 128 Stat. 2114 , provided that:

"(a) ESTABLISHMENT.-The Law School Clinic Certification Program of the United States Patent and Trademark Office, as implemented by the Office, is established as a program entitled the 'Law School Clinic Certification Program'. The Program shall allow students enrolled in a participating law school's clinic to practice patent and trademark law before the Office by drafting, filing, and prosecuting patent or trademark applications, or both, on a pro-bono basis for clients that qualify for assistance from the law school's clinic. The Director shall establish regulations and procedures for application to and participation in the Program. All law schools accredited by the American Bar Association are eligible for participation in the Program, and shall be examined for acceptance using identical criteria established by the Director. The Program shall be in effect for the 10-year period beginning on the date of the enactment of this Act [Dec. 16, 2014].

"(b) REPORT ON THE PROGRAM.-The Director shall, not later than the last day of the 2-year period beginning on the date of the enactment of this Act, submit to the Committees on the Judiciary of the House of Representatives and the Senate a report on the Program, describing the number of law schools and law students participating in the Program, the work done through the Program, the benefits of the Program, and any recommendations of the Director for modifications to the Program.

"(c) DEFINITIONS.-In this section:

"(1) OFFICE.-The term 'Office' means the United States Patent and Trademark Office.

"(2) PROGRAM.-The term 'Program' means the Law School Clinic Certification Program established in subsection (a).

"(3) DIRECTOR.-The term 'Director' means the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office."

PATENT OMBUDSMAN PROGRAM FOR SMALL BUSINESS CONCERNS

Pub. L. 112-29, §28, Sept. 16, 2011, 125 Stat. 339 , provided that: "Using available resources, the Director [Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office] shall establish and maintain in the [United States Patent and Trademark] Office a

Patent Ombudsman Program. The duties of the Program's staff shall include providing support and services relating to patent filings to small business concerns and independent inventors."

PRO BONO PROGRAMS

Pub. L. 112-29, §32, Sept. 16, 2011, 125 Stat. 340 , provided that:

"(a) IN GENERAL.-The Director [Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office] shall work with and support intellectual property law associations across the country in the establishment of pro bono programs designed to assist financially under-resourced independent inventors and small businesses.

"(b) EFFECTIVE DATE.-This section shall take effect on the date of the enactment of this Act [Sept. 16, 2011]."

ELECTRONIC FILING AND PROCESSING OF PATENT AND TRADEMARK APPLICATIONS

Pub. L. 107-273, div. C, title III, §13103, Nov. 2, 2002, 116 Stat. 1899 , provided that:

"(a) ELECTRONIC FILING AND PROCESSING.-The Director [of the Patent and Trademark Office] shall, beginning not later than 90 days after the date of enactment of this Act [Nov. 2, 2002], and during the 3-year period thereafter, develop an electronic system for the filing and processing of patent and trademark applications, that-

"(1) is user friendly; and

"(2) includes the necessary infrastructure-

"(A) to allow examiners and applicants to send all communications electronically; and

"(B) to allow the Office to process, maintain, and search electronically the contents and history of each application.

"(b) AUTHORIZATION OF APPROPRIATIONS.-Of amounts authorized under section 13102 [set out as a note under section 42 of this title], there is authorized to be appropriated to carry out subsection (a) of this section not more than \$50,000,000 for each of fiscal years 2003, 2004, and 2005. Amounts made available pursuant to this subsection shall remain available until expended."