

-CITE-

35 USC Sec. 146

02/01/2010

-EXPCITE-

TITLE 35 - PATENTS

PART II - PATENTABILITY OF INVENTIONS AND GRANT OF PATENTS

CHAPTER 13 - REVIEW OF PATENT AND TRADEMARK OFFICE DECISIONS

-HEAD-

Sec. 146. Civil action in case of interference

-STATUTE-

Any party to an interference dissatisfied with the decision of the Board of Patent Appeals and Interferences on the interference, may have remedy by civil action, if commenced within such time after such decision, not less than sixty days, as the Director appoints or as provided in section 141 of this title, unless he has appealed to the United States Court of Appeals for the Federal Circuit, and such appeal is pending or has been decided. In such suits the record in the Patent and Trademark Office shall be admitted on motion of either party upon the terms and conditions as to costs, expenses, and the further cross-examination of the witnesses as the court imposes, without prejudice to the right of the parties to take further testimony. The testimony and exhibits of the record in the Patent and Trademark Office when admitted shall have the same effect as if originally taken and produced in the suit.

Such suit may be instituted against the party in interest as

shown by the records of the Patent and Trademark Office at the time of the decision complained of, but any party in interest may become a party to the action. If there be adverse parties residing in a plurality of districts not embraced within the same state, or an adverse party residing in a foreign country, the United States District Court for the District of Columbia shall have jurisdiction and may issue summons against the adverse parties directed to the marshal of any district in which any adverse party resides. Summons against adverse parties residing in foreign countries may be served by publication or otherwise as the court directs. The Director shall not be a necessary party but he shall be notified of the filing of the suit by the clerk of the court in which it is filed and shall have the right to intervene. Judgment of the court in favor of the right of an applicant to a patent shall authorize the Director to issue such patent on the filing in the Patent and Trademark Office of a certified copy of the judgment and on compliance with the requirements of law.

-SOURCE-

(July 19, 1952, ch. 950, 66 Stat. 803; Pub. L. 93-596, Sec. 1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 97-164, title I, Sec. 163(a)(7), Apr. 2, 1982, 96 Stat. 49; Pub. L. 98-622, title II, Sec. 203(c), Nov. 8, 1984, 98 Stat. 3387; Pub. L. 106-113, div. B, Sec. 1000(a)(9) [title IV, Sec. 4732(a)(10)(A)], Nov. 29, 1999, 113 Stat. 1536, 1501A-582; Pub. L. 107-273, div. C, title III, Sec. 13206(b)(1)(B), Nov. 2, 2002, 116 Stat. 1906.)

HISTORICAL AND REVISION NOTES

The first paragraph and parts of the second paragraph are based on Title 35, U.S.C., 1946 ed., Sec. 63 (R.S. 4915, amended (1) Mar. 2, 1927, ch. 273, Sec. 11, 44 Stat. 1336, (2) Mar. 2, 1929, ch. 488, Sec. 2(b), 45 Stat. 1476, (3) Aug. 5, 1939, ch. 451, Sec. 4, 53 Stat. 1212), limited to interferences and making some changes. The action is not restricted to applicants, but a patentee may also bring the action. The time for bringing the action is made the same as for appeals.

In the second paragraph the first sentence is new and eliminates difficulties arising from unrecorded interests.

The second sentence is based on Title 35, U.S.C., 1946 ed., Sec. 72a (Mar. 3, 1927, ch. 364, 44 Stat. 1394, reenacted Oct. 31, 1951, ch. 655, Sec. 53a, 65 Stat. 728) with changes in language.

The fourth sentence is new and prevents such suits from being filed against the Commissioner as a defendant; however, the Commissioner has the right to intervene.

Language is changed.

AMENDMENTS

2002 - Pub. L. 107-273 made technical correction to directory language of Pub. L. 106-113. See 1999 Amendment note below.

1999 - Pub. L. 106-113, as amended by Pub. L. 107-273, substituted "Director" for "Commissioner" wherever appearing.

1984 - Pub. L. 98-622 substituted "Board of Patent Appeals and

Interferences on the interference" for "board of patent interference on the question of priority".

1982 - Pub. L. 97-164 substituted "Court of Appeals for the Federal Circuit" for "Court of Customs and Patent Appeals".

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

#### 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, Sec. 4731] of Pub. L. 106-113, set out as **a** note under section 1 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-622 effective three months after Nov. 8, 1984, see section 207 of Pub. L. 98-622, set out as **a** note under section 41 of this title.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as **a** note under section 171 of Title 28, Judiciary and Judicial Procedure.

#### 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.