

and chapter 29 (other than those provisions excluded by paragraph (2)) of this title.

(d) *Provisional rights.**—

(1) *In general.*—In addition to other rights provided by this section, a patent shall include the right to obtain a reasonable royalty from any person who, during the period beginning on the date of publication of the application for such patent under section 122(b), or in the case of an international application filed under the treaty defined in section 351(a) designating the United States under Article 21(2)(a) of such treaty, the date of publication of the application, and ending on the date the patent is issued—

(A)(i) makes, uses, offers for sale, or sells in the United States the invention as claimed in the published patent application or imports such an invention into the United States; or

(ii) if the invention as claimed in the published patent application is a process, uses, offers for sale, or sells in the United States or imports into the United States products made by that process as claimed in the published patent application; and

(B) had actual notice of the published patent application and, in a case in which the right arising under this paragraph is based upon an international application designating the United States that is published in a language other than English, had a translation of the international application into the English language.

(2) *Right based on substantially identical inventions.*—The right under paragraph (1) to obtain a reasonable royalty shall not be available under this subsection unless the invention as claimed in the patent is substantially identical to the invention as claimed in the published patent application.

(3) *Time limitation on obtaining a reasonable royalty.*—The right under paragraph (1) to obtain a reasonable royalty shall be available only in an action brought not later than 6 years after the patent is issued.

* *Ed. Note:* Pursuant to §4508 of Pub. L. 106-113, §154(d) took effect one year after the Nov. 29, 1999 date of enactment and applies to all applications filed under §111 on or after that date and all applications complying with §371 that resulted from international applications filed on or after that date.

The right under paragraph (1) to obtain a reasonable royalty shall not be affected by the duration of the period described in paragraph (1).

(4) *Requirements for international applications.*—

(A) *Effective date.*—The right under paragraph (1) to obtain a reasonable royalty based upon the publication under the treaty defined in section 351(a) of an international application designating the United States shall commence on the date of publication under the treaty of the international application, or, if the publication under the treaty of the international application is in a language other than English, on the date on which the Patent and Trademark Office receives a translation of the publication in the English language.

(B) *Copies.*—The Director may require the applicant to provide a copy of the international application and a translation thereof.

(July 19, 1952, ch. 950, §1, 66 Stat. 804; July 24, 1965, Pub. L. 89-83, §5, 79 Stat. 261; Dec. 12, 1980, Pub. L. 96-517, §4, 94 Stat. 3018; Aug. 23, 1988, Pub. L. 100-418, §9002, 102 Stat. 1563; Dec. 8, 1994, Pub. L. 103-465, §532, 108 Stat. 4983; Oct. 11, 1996, Pub. L. 104-295, Title V91, 110 Stat. 3529; Nov. 29, 1999, Pub. L. 106-113, §§4402, 4504, 113 Stat. 1501A-557, 564; Nov. 2, 2002, Pub. L. 107-273, §§13204, 13206, 116 Stat. 1904.)

§ 155 Patent term extension

Notwithstanding the provisions of section 154, the term of a patent which encompasses within its scope a composition of matter or a process for using such composition shall be extended if such composition or process has been subjected to a regulatory review by the Federal Food and Drug Administration pursuant to the Federal Food, Drug and Cosmetic Act leading to the publication of regulation permitting the interstate distribution and sale of such composition or process and for which there has thereafter been a stay of regulation of approval imposed pursuant to Section 409 of the Federal Food, Drug and Cosmetic Act which stay was in effect on January 1, 1981, by a length of time to be measured from the date such stay of regulation of approval was imposed until such proceedings are finally resolved and commercial marketing permitted. The patentee, his heirs, successors or assigns shall notify the Director within ninety days of the date of enactment of this