

validity or infringement arising under the contract. In the absence of such a provision, the parties to an existing patent validity or infringement dispute may agree in writing to settle such dispute by arbitration. Any such provision or agreement shall be valid, irrevocable, and enforceable, except for any grounds that exist at law or in equity for revocation of a contract.

(b) Arbitration of such disputes, awards by arbitrators and confirmation of awards shall be governed by title 9, to the extent such title is not inconsistent with this section. In any such arbitration proceeding, the defenses provided for under section 282 of this title shall be considered by the arbitrator if raised by any party to the proceeding.

(c) An award by an arbitrator shall be final and binding between the parties to the arbitration but shall have no force or effect on any other person. The parties to an arbitration may agree that in the event a patent which is the subject matter of an award is subsequently determined to be invalid or unenforceable in a judgment rendered by a court of competent jurisdiction from which no appeal can or has been taken, such award may be modified by any court of competent jurisdiction upon application by any party to the arbitration. Any such modification shall govern the rights and obligations between such parties from the date of such modification.

(d) When an award is made by an arbitrator, the patentee, his assignee or licensee shall give notice thereof in writing to the Director. There shall be a separate notice prepared for each patent involved in such proceeding. Such notice shall set forth the names and addresses of the parties, the name of the inventor, and the name of the patent owner, shall designate the number of the patent, and shall contain a copy of the award. If an award is modified by a court, the party requesting such modification shall give notice of such modification to the Director. The Director shall, upon receipt of either notice, enter the same in the record of the prosecution of such patent. If the required notice is not filed with the Director, any party to the proceeding may provide such notice to the Director.

(e) The award shall be unenforceable until the notice required by subsection (d) is received by the Director.

(Added Pub. L. 97-247, § 17(b)(1), Aug. 27, 1982, 96 Stat. 322; amended 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)(19), (b)(1)(B), Nov. 2, 2002, 116 Stat. 1905, 1906.)

#### AMENDMENTS

2002—Subsec. (b). Pub. L. 107-273, § 13206(a)(19)(A), struck out “United States Code,” after “title 9.”

Subsec. (c). Pub. L. 107-273, § 13206(a)(19)(B), substituted “rendered by a court of” for “rendered by a court to”.

Subsecs. (d), (e). 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. (d), (e). Pub. L. 106-113, as amended by Pub. L. 107-273, § 13206(b)(1)(B), substituted “Director” for “Commissioner” 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, § 4731] of Pub. L. 106-113, set out as a note under section 1 of this title.

#### EFFECTIVE DATE

Section 17(c) of Pub. L. 97-247 provided that: “Sections 5, 6, 8 through 12, and 17(b) of this Act [enacting this section and amending sections 21, 111, 116, and 256 of this title and sections 1058, 1063, 1064, 1065, and 1066 of Title 15, Commerce and Trade] shall take effect six months after enactment [Aug. 27, 1982].”

#### § 295. Presumption: Product made by patented process

In actions alleging infringement of a process patent based on the importation, sale, offer for sale, or use of a product which is made from a process patented in the United States, if the court finds—

(1) that a substantial likelihood exists that the product was made by the patented process, and

(2) that the plaintiff has made a reasonable effort to determine the process actually used in the production of the product and was unable to so determine,

the product shall be presumed to have been so made, and the burden of establishing that the product was not made by the process shall be on the party asserting that it was not so made.

(Added Pub. L. 100-418, title IX, § 9005(a), Aug. 23, 1988, 102 Stat. 1566; amended Pub. L. 103-465, title V, § 533(b)(7), Dec. 8, 1994, 108 Stat. 4990.)

#### AMENDMENTS

1994—Pub. L. 103-465 substituted “sale, offer for sale, or use” for “sale, or use” in introductory provisions.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-465 effective on date that is one year after date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], with provisions relating to earliest filed patent application, see section 534(a), (b)(3) of Pub. L. 103-465, set out as a note under section 154 of this title.

#### EFFECTIVE DATE

Section effective 6 months after Aug. 23, 1988, and, subject to enumerated exceptions, applicable only with respect to products made or imported after such effective date, see section 9006 of Pub. L. 100-418, set out as an Effective Date of 1988 Amendment note under section 271 of this title.

#### § 296. Liability of States, instrumentalities of States, and State officials for infringement of patents

(a) IN GENERAL.—Any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his official capacity, shall not be immune, under the eleventh amendment of the Constitution of the United States or under any other doctrine of sovereign immunity, from suit in Federal court by any person, including any governmental or nongovernmental entity, for infringement of a patent under section 271, or for any other violation under this title.

(b) REMEDIES.—In a suit described in subsection (a) for a violation described in that sub-

section, remedies (including remedies both at law and in equity) are available for the violation to the same extent as such remedies are available for such a violation in a suit against any private entity. Such remedies include damages, interest, costs, and treble damages under section 284, attorney fees under section 285, and the additional remedy for infringement of design patents under section 289.

(Added Pub. L. 102-560, §2(a)(2), Oct. 28, 1992, 106 Stat. 4230.)

#### EFFECTIVE DATE

Section effective with respect to violations that occur on or after Oct. 28, 1992, see section 4 of Pub. L. 102-560, set out as an Effective Date of 1992 Amendment note under section 2541 of Title 7, Agriculture.

### § 297. Improper and deceptive invention promotion

(a) IN GENERAL.—An invention promoter shall have a duty to disclose the following information to a customer in writing, prior to entering into a contract for invention promotion services:

(1) the total number of inventions evaluated by the invention promoter for commercial potential in the past 5 years, as well as the number of those inventions that received positive evaluations, and the number of those inventions that received negative evaluations;

(2) the total number of customers who have contracted with the invention promoter in the past 5 years, not including customers who have purchased trade show services, research, advertising, or other nonmarketing services from the invention promoter, or who have defaulted in their payment to the invention promoter;

(3) the total number of customers known by the invention promoter to have received a net financial profit as a direct result of the invention promotion services provided by such invention promoter;

(4) the total number of customers known by the invention promoter to have received license agreements for their inventions as a direct result of the invention promotion services provided by such invention promoter; and

(5) the names and addresses of all previous invention promotion companies with which the invention promoter or its officers have collectively or individually been affiliated in the previous 10 years.

(b) CIVIL ACTION.—(1) Any customer who enters into a contract with an invention promoter and who is found by a court to have been injured by any material false or fraudulent statement or representation, or any omission of material fact, by that invention promoter (or any agent, employee, director, officer, partner, or independent contractor of such invention promoter), or by the failure of that invention promoter to disclose such information as required under subsection (a), may recover in a civil action against the invention promoter (or the officers, directors, or partners of such invention promoter), in addition to reasonable costs and attorneys' fees—

(A) the amount of actual damages incurred by the customer; or

(B) at the election of the customer at any time before final judgment is rendered, statutory damages in a sum of not more than \$5,000, as the court considers just.

(2) Notwithstanding paragraph (1), in a case where the customer sustains the burden of proof, and the court finds, that the invention promoter intentionally misrepresented or omitted a material fact to such customer, or willfully failed to disclose such information as required under subsection (a), with the purpose of deceiving that customer, the court may increase damages to not more than three times the amount awarded, taking into account past complaints made against the invention promoter that resulted in regulatory sanctions or other corrective actions based on those records compiled by the Commissioner of Patents under subsection (d).

(c) DEFINITIONS.—For purposes of this section—

(1) a “contract for invention promotion services” means a contract by which an invention promoter undertakes invention promotion services for a customer;

(2) a “customer” is any individual who enters into a contract with an invention promoter for invention promotion services;

(3) the term “invention promoter” means any person, firm, partnership, corporation, or other entity who offers to perform or performs invention promotion services for, or on behalf of, a customer, and who holds itself out through advertising in any mass media as providing such services, but does not include—

(A) any department or agency of the Federal Government or of a State or local government;

(B) any nonprofit, charitable, scientific, or educational organization, qualified under applicable State law or described under section 170(b)(1)(A) of the Internal Revenue Code of 1986;

(C) any person or entity involved in the evaluation to determine commercial potential of, or offering to license or sell, a utility patent or a previously filed nonprovisional utility patent application;

(D) any party participating in a transaction involving the sale of the stock or assets of a business; or

(E) any party who directly engages in the business of retail sales of products or the distribution of products; and

(4) the term “invention promotion services” means the procurement or attempted procurement for a customer of a firm, corporation, or other entity to develop and market products or services that include the invention of the customer.

(d) RECORDS OF COMPLAINTS.—

(1) RELEASE OF COMPLAINTS.—The Commissioner of Patents shall make all complaints received by the Patent and Trademark Office involving invention promoters publicly available, together with any response of the invention promoters. The Commissioner of Patents shall notify the invention promoter of a complaint and provide a reasonable opportunity to reply prior to making such complaint publicly available.