

(2) Vessels operating exclusively within the Marine Inspection and Captain of the Port Zone;

(3) Vessels on a single voyage which depart from and return to the same port or place within the RNA;

(4) U.S. flagged public vessels; and

(5) Primary towing vessels engaged in towing tank barges carrying petroleum oil in bulk as cargo and issuing the security calls required under 33 CFR 165.100(d)(2).

(c) *Effective dates.* This section is effective from December 10, 2001 until June 15, 2002.

(d) *Regulations.* (1) Speed restrictions in vicinity of Naval Submarine Base New London and Lower Thames River. Vessels of 300 gross tons or more may not proceed at a speed over eight knots in the Thames River from New London Harbor channel buoys 7 and 8 (Light List numbers 21875 and 21880 respectively) north through the upper limit of the Naval Submarine Base New London Restricted Area, as specified in 33 CFR 334.75(a). All vessels less than 300 gross tons are exempt from this rule. This speed restriction does not apply to public vessels as defined in 33 U.S.C. 1321(a)(4). The U.S. Navy and other Federal, State and municipal agencies may assist the U.S. Coast Guard in the enforcement of this rule.

(2) All inbound vessels operating within the RNA must be inspected to the satisfaction of the United States Coast Guard and must obtain authorization from the Captain of the Port before crossing the line three nautical miles from the territorial sea baseline.

(3) Vessels awaiting inspection or Captain of the Port authorization to enter within the three nautical mile line will be directed to anchor in a specific location within the Regulated Navigation Area.

(4) Vessels over 1,600 gross tons operating in the RNA within the line extending seaward three nautical miles from the territorial sea baseline must receive authorization from the Captain of the Port prior to any vessel movements.

3. Add temporary § 165.T01-154 to read as follows:

**§ 165.T01-154 Safety and Security Zones: Long Island Sound Marine Inspection Zone and Captain of the Port Zone.**

(a) *Safety and security zones.* The following are established as safety and security zones:

(1) *Safety and Security Zone A:* The waters of Long Island Sound south, east and west of the Millstone Power Plant within a seven hundred (700) yard radius of the stack at Millstone, Lat.

41°18'34" North, Long. 72°9'57" West (NAD 83).

(2) *Safety and Security Zone B:* U. S. Coast Guard vessels: All waters within a 100-yard radius of any anchored U. S. Coast Guard vessel.

(b) *Effective date.* This section is effective from December 10, 2001 until June 15, 2002.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 and 165.33 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: December 10, 2001.

**G. N. Naccara,**

*Rear Admiral, U.S. Coast Guard, District Commander.*

[FR Doc. 02-160 Filed 1-3-02; 8:45 am]

**BILLING CODE 4910-15-P**

**DEPARTMENT OF COMMERCE**

**Patent and Trademark Office**

**37 CFR Part 1**

[Docket No. 011108271-1271-01]

**RIN 0651-AB44**

**Revision of the Time Limit for National Stage Commencement in the United States for Patent Cooperation Treaty Applications**

**AGENCY:** Patent and Trademark Office, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The United States Patent and Trademark Office (Office) is revising the rules of practice relating to applications filed under the Patent Cooperation Treaty (PCT). This rule modifies the Office's rules of practice to comply with an amendment to the PCT. The changes in this rule specifically involve revising the rules of practice consistent with the change to the PCT to have a single time limit for national stage commencement for applications filed under the PCT, regardless of whether the applicant filed a Demand for an international preliminary examination.

**DATES:** *Effective Date:* April 1, 2002.

*Applicability Date:* The changes in this final rule apply to any international (PCT) application in which the twenty-

month period from the priority date expires on or after April 1, 2002, and in which the applicant has not yet entered the national stage as defined in 37 CFR 1.491(b) by April 1, 2002.

**FOR FURTHER INFORMATION CONTACT:**

Charles A. Pearson, Director, Office of PCT Legal Administration, by telephone at (703) 306-4145, or Boris Milef, Legal Examiner, Office of PCT Legal Administration, by telephone at (703) 308-3659, or by mail addressed to: Box PCT—Patents, Commissioner for Patents, Washington, D.C. 20231, or by facsimile to (703) 308-6459, marked to the attention of Boris Milef.

**SUPPLEMENTARY INFORMATION:** During a September-October 2001 meeting of the Governing Bodies of the World Intellectual Property Organization (WIPO), the PCT Assembly adopted an amendment to the PCT Article 22. Specifically, PCT Article 22 was amended to change its time limit for entering the national stage of twenty months from the priority date of the PCT application to a time limit of thirty months from the priority date of the PCT application. See PCT Article 47 (allows the time limits fixed in PCT Chapters I and II to be modified by a decision of the Contracting States through the PCT Assembly, subject to certain conditions). This amendment to PCT Article 22 takes effect on April 1, 2002.

With this amendment to PCT Article 22, the time limit under PCT Article 22 and the time limit under PCT Article 39 will be the same: thirty months from the priority date of the PCT application. Thus, the PCT will provide a single time period for national stage commencement for PCT applications, regardless of whether the applicant filed a Demand for an international preliminary examination. Therefore, applicants will no longer be required to file a Demand for an international preliminary examination under PCT Article 31 (and pay the international preliminary examination fees under 37 CFR 1.482) in order to delay commencement of the national stage until thirty months from the priority date. An applicant's decision whether to file a Demand under PCT Article 31 may be based upon whether the applicant wants an international preliminary examination report, and not upon whether the applicant wants to delay commencement of the national stage until thirty months from the priority date.

## Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, Part 1, is amended as follows:

*Section 1.8:* Section 1.8(a)(2)(i)(F) is amended to eliminate its reference to § 1.494 (which is removed and reserved).

*Section 1.14:* Section 1.14(d)(4) is amended to eliminate its reference to § 1.494 (which is removed and reserved).

*Section 1.25:* Section 1.25(b) is amended to eliminate its reference to § 1.494 (which is removed and reserved). Section 1.25 is also amended to place the sentence “[a]n authorization to charge a fee to a deposit account will not be considered payment of the fee on the date the authorization to charge the fee is effective as to the particular fee to be charged unless sufficient funds are present in the account to cover the fee” at the end of the paragraph because that provision is applicable to all of the charges provided for in § 1.25(b).

*Section 1.41:* Section 1.41(a)(4) is amended to state that the inventorship of an international application entering the national stage under 35 U.S.C. 371 is that inventorship set forth in the international application, and to indicate that the inventorship set forth in the international application includes any change effected under PCT Rule 92*bis*. Section 1.41(a)(4) is also amended to refer to § 1.497(d) and (f) for filing an oath or declaration naming an inventive entity different from the inventive entity named in the international application, or if a change to the inventive entity has been effected under PCT Rule 92*bis* subsequent to the execution of any declaration filed under PCT Rule 4.17(iv).

*Section 1.48:* Section 1.48(f)(1) is amended to change “enter the national stage under 35 U.S.C. 371 and § 1.494 or § 1.495” to “enter the national stage under 35 U.S.C. 371” (§ 1.494 is removed and reserved).

*Section 1.103:* Section 1.103(d)(1) is amended to eliminate its reference to § 1.494 (which is removed and reserved).

*Section 1.417:* Section 1.417 is amended to eliminate its reference to § 1.494 (which is removed and reserved).

*Section 1.480:* Section 1.480 is amended to remove paragraph (c) and redesignate paragraph (d) as paragraph (c). Former § 1.480(c) is now unnecessary because the provisions of § 1.495 apply regardless of whether a Demand is made prior to the expiration of the nineteenth month from the priority date.

*Section 1.491:* Section 1.491 is amended to define both commencement of the national stage and entry into the national stage. Because these two events (commencement of the national stage and entry into the national stage) may not take place at the same time, the Office is amending § 1.491 to clarify when each of these two events takes place. Section 1.491(a) incorporates the statutory language contained in 35 U.S.C. 371(b), thus providing that “[s]ubject to 35 U.S.C. 371(f), the national stage shall commence with the expiration of the applicable time limit under PCT Article 22(1) or (2), or under PCT Article 39(1)(a).” However, in view of the amendment to PCT Article 22, the time limit under PCT Article 22(1) or (2) is now the same as the time limit under PCT Article 39(1)(a): thirty months from the priority date of the PCT application.

Section 1.491(b) contains the provisions of former § 1.491 amended to eliminate its reference to § 1.494 (which is removed and reserved), and provides that an international application enters the national stage when the applicant has filed the documents and fees required by 35 U.S.C. 371(c) within the period set in § 1.495.

The Office previously published a temporary rule that amends § 1.491 to define both commencement of the national stage and entry into the national stage in the manner discussed above. See *Timing of National Stage Commencement in the United States for Patent Cooperation Treaty Applications*, 66 FR 45775 (Aug. 30, 2001), 1250 *Off. Gaz. Pat. Office* 147 (Sept. 25, 2001). The Office also published a notice proposing the above change to § 1.491 for public comment. See *Requirements for Claiming the Benefit of Prior-Filed Applications Under Eighteen-Month Publication of Patent Applications*, 66 FR 46409 (Sept. 5, 2001), 1251 *Off. Gaz. Pat. Office* 16 (Oct. 2, 2001). The Office received no comment on the proposed change to § 1.491.

*Section 1.492:* Sections 1.492(e) and (f) are amended to eliminate their reference to § 1.494 (which is removed and reserved).

*Section 1.494:* Section 1.494 is removed and reserved. Since the time period for commencement of the national stage in the United States of America will not depend upon whether the applicant has filed a Demand under PCT Article 31, it will no longer be necessary to provide separately in § 1.494 and § 1.495 for the time period for filing the documents and fees required by 35 U.S.C. 371(c) for: (1) Applications in which a Demand under Article 31 has not been filed within nineteen months from the priority date

(§ 1.494); and (2) applications in which a Demand under Article 31 has been filed within nineteen months from the priority date (§ 1.495).

*Section 1.495:* Section 1.495 is amended to be applicable regardless of whether the applicant has filed a Demand under Article 31 within nineteen months from the priority date. Section 1.495 is also amended to eliminate unassociated text in § 1.495(b) and § 1.495(c).

*Section 1.497:* Sections 1.497(a) and 1.497(c) are amended to eliminate their reference to § 1.494 (which is removed and reserved).

*Section 1.497(d)* is amended to clarify that if a change to the inventive entity has been effected under PCT Rule 92*bis* subsequent to the execution of any oath or declaration that was filed in the application under PCT Rule 4.17(iv) or § 1.497, the requirements of § 1.497(d)(1) through (d)(4) apply only if the inventive entity changed pursuant to PCT Rule 92*bis* is different from the inventive entity identified in any previously filed oath or declaration application under PCT Rule 4.17(iv) or § 1.497. Section 1.497(d) is also amended such that a new oath or declaration is not required under § 1.497(d) unless a new oath or declaration is required by § 1.497(f). Section 1.497(f) is amended to provide that a new oath or declaration under § 1.497 is not required when a change in the inventive entity is effected under PCT Rule 92*bis* after the declaration was executed unless no declaration which sets forth and is executed by the inventive entity as so changed has been filed in the application. Therefore, if a declaration under PCT Rule 4.17(iv) naming and executed by a first inventive entity is followed by a change of inventive entity under PCT Rule 92*bis* and a new declaration under PCT Rule 4.17(iv) naming and executed by the new (second) inventive entity filed in the application, the applicant must comply with the requirements of § 1.497(d) to enter the national stage but a new oath or declaration under § 1.497 is not required because the application contains a declaration under PCT Rule 4.17(iv) setting forth the inventive entity as changed pursuant to PCT Rule 92*bis*.

## Classification

### *Administrative Procedure Act*

The changes in this final rule relate solely to Office practices and procedures for patent applications filed under the PCT. Accordingly, this final rule involves rules of agency practice and procedure under 5 U.S.C. 553(b)(A), and may be adopted without prior

notice and opportunity for public comment under 5 U.S.C. 553(b) and (c), or thirty-day advance publication under 5 U.S.C. 553(d). See *Bachow Communications Inc. v. FCC*, 237 F.3d 683, 690 (D.C. Cir. 2001). However, the Office did provide notice and an opportunity for comment on the change to § 1.491 in order to obtain the benefit of public comment on this change.

#### *Regulatory Flexibility Act*

As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 (or any other law), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. As such, the regulatory flexibility analysis is not required, and none has been provided. See 5 U.S.C. 603.

#### *Executive Order 13132*

This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

#### *Executive Order 12866*

This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

#### *Paperwork Reduction Act*

This rulemaking involves information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collections of information involved in this rulemaking have been reviewed and previously approved by OMB under the following control numbers 0651-0021, 0651-0031, and 0651-0032. The Office is not resubmitting an information collection package to OMB for its review and approval because the changes in this rulemaking do not affect the information collection requirements associated with the information collections under OMB control numbers 0651-0021, 0651-0031, or 0651-0032.

The title, description and respondent description of the information collections are shown below with an estimate of the annual reporting burdens. Included in the estimates are the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

*OMB Number:* 0651-0021.

*Title:* Patent Cooperation Treaty.

*Form Numbers:* PCT/RO/101, ANNEX/134/144, PTO-1382, PCT/IPEA/401, PCT/IB/328.

*Type of Review:* Regular submission (approved through December of 2003).

*Affected Public:* Individuals or Households, Business or Other For-Profit Institutions, Federal Agencies or Employees, Not-for-Profit Institutions, Small Businesses or Organizations.

*Estimated Number of Respondents:* 331,288.

*Estimated Time Per Response:* Between 15 minutes and 4 hours.

*Estimated Total Annual Burden Hours:* 401,083.

*Needs and Uses:* The information collected is required by the Patent Cooperation Treaty (PCT). The general purpose of the PCT is to simplify the filing of patent applications on the same invention in different countries. It provides for a centralized filing procedure and a standardized application format.

*OMB Number:* 0651-0031.

*Title:* Patent Processing (Updating).

*Form Numbers:* PTO/SB/08/21-27/30-32/35-37/42/43/61/62/63/64/67/68/91/92/96/97/PTO-2053/PTO-2055.

*Type of Review:* Regular submission (approved through October of 2002).

*Affected Public:* Individuals or Households, Business or Other For-Profit Institutions, Not-for-Profit Institutions and Federal Government.

*Estimated Number of Respondents:* 2,247,389.

*Estimated Time Per Response:* 0.45 hours.

*Estimated Total Annual Burden Hours:* 1,021,941 hours.

*Needs and Uses:* During the processing of an application for a patent, the applicant/agent may be required or may desire to submit additional information to the United States Patent and Trademark Office concerning the examination of a specific application. The specific information required or which may be submitted includes: Information Disclosure Statements; Terminal Disclaimers; Petitions to Revoke; Express Abandonments; Appeal Notices; Petitions for Access; Powers to Inspect; Certificates of Mailing or Transmission; Statements under § 3.73(b); Amendments; Petitions and their Transmittal Letters; and Deposit Account Order Forms.

*OMB Number:* 0651-0032.

*Title:* Initial Patent Application.

*Form Number:* PTO/SB/01-07/13PCT/17-19/29/101-110.

*Type of Review:* Regular submission (approved through October of 2002).

*Affected Public:* Individuals or Households, Business or Other For-Profit Institutions, Not-for-Profit Institutions and Federal Government.

*Estimated Number of Respondents:* 319,350.

*Estimated Time Per Response:* 9.35 hours.

*Estimated Total Annual Burden Hours:* 2,984,360 hours.

*Needs and Uses:* The purpose of this information collection is to permit the Office to determine whether an application meets the criteria set forth in the patent statute and regulations. The standard Fee Transmittal form, New Utility Patent Application Transmittal form, New Design Patent Application Transmittal form, New Plant Patent Application Transmittal form, Declaration, and Plant Patent Application Declaration will assist applicants in complying with the requirements of the patent statute and regulations, and will further assist the Office in the processing and examination of the application.

Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information to respondents.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to Robert J. Spar, Director, Office of Patent Legal Administration, United States Patent and Trademark Office, Washington, DC 20231, or to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, 725 17th Street, NW., Room 10235, Washington, DC 20503, Attention: Desk Officer for the United States Patent and Trademark Office.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

#### **List of Subjects in 37 CFR Part 1**

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and record keeping requirements, Small Businesses.

For the reasons set forth in the preamble, 37 CFR Part 1 is amended as follows:

**PART 1—RULES OF PRACTICE IN PATENT CASES**

1. The authority citation for 37 CFR Part 1 continues to read as follows:

**Authority:** 35 U.S.C. 2(b)(2).

2. Section 1.8 is amended by revising paragraph (a)(2)(i)(F) to read as follows:

**§ 1.8 Certificate of mailing or transmission.**

- (a) \* \* \*
- (2) \* \* \*
- (i) \* \* \*

(F) The filing of a copy of the international application and the basic national fee necessary to enter the national stage, as specified in § 1.495(b).

\* \* \* \* \*

3. Section 1.14 is amended by revising paragraph (d)(4) to read as follows:

**§ 1.14 Patent applications preserved in confidence.**

- \* \* \* \* \*
- (d) \* \* \*

(4) A registered attorney or agent named in the papers accompanying the application papers filed under § 1.53 or the national stage documents filed under § 1.495, if an executed oath or declaration pursuant to § 1.63 or § 1.497 has not been filed.

\* \* \* \* \*

4. Section 1.25 is amended by revising paragraph (b) to read as follows:

**§ 1.25 Deposit accounts.**

\* \* \* \* \*

(b) Filing, issue, appeal, international-type search report, international application processing, petition, and post-issuance fees may be charged against these accounts if sufficient funds are on deposit to cover such fees. A general authorization to charge all fees, or only certain fees, set forth in §§ 1.16 to 1.18 to a deposit account containing sufficient funds may be filed in an individual application, either for the entire pendency of the application or with a particular paper filed. An authorization to charge fees under § 1.16 in an international application entering the national stage under 35 U.S.C. 371 will be treated as an authorization to charge fees under § 1.492. An authorization to charge fees set forth in § 1.18 to a deposit account is subject to the provisions of § 1.311(b). An authorization to charge to a deposit account the fee for a request for reexamination pursuant to § 1.510 or § 1.913 and any other fees required in a reexamination proceeding in a patent may also be filed with the request for reexamination. An authorization to charge a fee to a deposit account will not be considered payment of the fee on

the date the authorization to charge the fee is effective as to the particular fee to be charged unless sufficient funds are present in the account to cover the fee.

5. Section 1.41 is amended by revising paragraph (a)(4) to read as follows:

**§ 1.41 Applicant for patent.**

- (a) \* \* \*

(4) The inventorship of an international application entering the national stage under 35 U.S.C. 371 is that inventorship set forth in the international application, which includes any change effected under PCT Rule 92*bis*. See § 1.497(d) and (f) for filing an oath or declaration naming an inventive entity different from the inventive entity named in the international application, or if a change to the inventive entity has been effected under PCT Rule 92*bis* subsequent to the execution of any declaration filed under PCT Rule 4.17(iv) (§ 1.48(f)(1) does not apply to an international application entering the national stage under 35 U.S.C. 371).

\* \* \* \* \*

6. Section 1.48 is amended by revising paragraph (f)(1) to read as follows:

**§ 1.48 Correction of inventorship in a patent application, other than a reissue application, pursuant to 35 U.S.C. 116.**

\* \* \* \* \*

(f)(1) *Nonprovisional application—filing executed oath/declaration corrects inventorship.* If the correct inventor or inventors are not named on filing a nonprovisional application under § 1.53(b) without an executed oath or declaration under § 1.63 by any of the inventors, the first submission of an executed oath or declaration under § 1.63 by any of the inventors during the pendency of the application will act to correct the earlier identification of inventorship. See §§ 1.41(a)(4) and 1.497(d) and (f) for submission of an executed oath or declaration to enter the national stage under 35 U.S.C. 371 naming an inventive entity different from the inventive entity set forth in the international stage.

\* \* \* \* \*

7. Section 1.103 is amended by revising paragraph (d)(1) to read as follows:

**§ 1.103 Suspension of action by the Office.**

\* \* \* \* \*

- (d) \* \* \*

(1) The application is an original utility or plant application filed under § 1.53(b) or resulting from entry of an international application into the national stage after compliance with § 1.495;

\* \* \* \* \*

8. Section 1.417 is revised to read as follows:

**§ 1.417 Submission of translation of international publication.**

The submission of the international publication or an English language translation of an international application pursuant to 35 U.S.C. 154(d)(4) must clearly identify the international application to which it pertains (§ 1.5(a)) and, unless it is being submitted pursuant to § 1.495, be clearly identified as a submission pursuant to 35 U.S.C. 154(d)(4). Otherwise, the submission will be treated as a filing under 35 U.S.C. 111(a). Such submissions should be marked “Box PCT.”

9. Section 1.480 is amended by removing paragraph (c) and redesignating paragraph (d) as paragraph (c).

10. Section 1.491 is revised to read as follows:

**§ 1.491. National stage commencement and entry.**

(a) Subject to 35 U.S.C. 371(f), the national stage shall commence with the expiration of the applicable time limit under PCT Article 22 (1) or (2), or under PCT Article 39(1)(a).

(b) An international application enters the national stage when the applicant has filed the documents and fees required by 35 U.S.C. 371(c) within the period set in § 1.495.

11. Section 1.492 is amended by revising paragraphs (e) and (f) to read as follows:

**§ 1.492 National stage fees.**

\* \* \* \* \*

(e) Surcharge for filing the oath or declaration later than thirty months from the priority date pursuant to § 1.495(c):

By a small entity (§ 1.27(a))	\$65.00
By other than a small entity	130.00

(f) For filing an English translation of an international application or of any annexes to an international preliminary examination report later than thirty months after the priority date (§ 1.495(c) and (e)).....\$130.00.

\* \* \* \* \*

12. Section 1.494 is removed and reserved.

**§ 1.494 [Removed and Reserved]**

13. Section 1.495 is amended by revising the section heading and by revising paragraphs (a) through (e) and (h) to read as follows:

**§ 1.495 Entering the national stage in the United States of America.**

(a) The applicant in an international application must fulfill the requirements of 35 U.S.C. 371 within the time periods set forth in paragraphs (b) and (c) of this section in order to prevent the abandonment of the international application as to the United States of America. The thirty-month time period set forth in paragraphs (b), (c), (d), (e) and (h) of this section may not be extended.

International applications for which those requirements are timely fulfilled will enter the national stage and obtain an examination as to the patentability of the invention in the United States of America.

(b) To avoid abandonment of the application, the applicant shall furnish to the United States Patent and Trademark Office not later than the expiration of thirty months from the priority date:

(1) A copy of the international application, unless it has been previously communicated by the International Bureau or unless it was originally filed in the United States Patent and Trademark Office; and

(2) The basic national fee (see § 1.492(a)).

(c) If applicant complies with paragraph (b) of this section before expiration of thirty months from the priority date but omits either a translation of the international application, as filed, into the English language, if it was originally filed in another language (35 U.S.C. 371(c)(2)), or the oath or declaration of the inventor (35 U.S.C. 371(c)(4) and § 1.497), if a declaration of inventorship in compliance with § 1.497 has not been previously submitted in the international application under PCT Rule 4.17(iv) within the time limits provided for in PCT Rule 26*ter.1*, applicant will be so notified and given a period of time within which to file the translation and/or oath or declaration in order to prevent abandonment of the application. The payment of the processing fee set forth in § 1.492(f) is required for acceptance of an English translation later than the expiration of thirty months after the priority date. The payment of the surcharge set forth in § 1.492(e) is required for acceptance of the oath or declaration of the inventor later than the expiration of thirty months after the priority date. A "Sequence Listing" need not be translated if the "Sequence Listing" complies with PCT Rule 12.1(d) and the description complies with PCT Rule 5.2(b).

(d) A copy of any amendments to the claims made under PCT Article 19, and a translation of those amendments into English, if they were made in another language, must be furnished not later than the expiration of thirty months from the priority date. Amendments under PCT Article 19 which are not received by the expiration of thirty months from the priority date will be considered to be canceled.

(e) A translation into English of any annexes to an international preliminary examination report (if applicable), if the annexes were made in another language, must be furnished not later than the expiration of thirty months from the priority date. Translations of the annexes which are not received by the expiration of thirty months from the priority date may be submitted within any period set pursuant to paragraph (c) of this section accompanied by the processing fee set forth in § 1.492(f). Annexes for which translations are not timely received will be considered canceled.

(h) An international application becomes abandoned as to the United States thirty months from the priority date if the requirements of paragraph (b) of this section have not been complied with within thirty months from the priority date. If the requirements of paragraph (b) of this section are complied with within thirty months from the priority date but either of any required translation of the international application as filed or the oath or declaration are not timely filed, an international application will become abandoned as to the United States upon expiration of the time period set pursuant to paragraph (c) of this section.

14. Section 1.497 is amended by revising the introductory text of paragraph (a) and paragraphs (c), (d) and (f) to read as follows:

**§ 1.497 Oath or declaration under 35 U.S.C. 371(c)(4).**

(a) When an applicant of an international application desires to enter the national stage under 35 U.S.C. 371 pursuant to § 1.495, and a declaration in compliance with this section has not been previously submitted in the international application under PCT Rule 4.17(iv) within the time limits provided for in PCT Rule 26*ter.1*, he or she must file an oath or declaration that:

(c) Subject to paragraph (f) of this section, if the oath or declaration meets the requirements of paragraphs (a) and

(b) of this section, the oath or declaration will be accepted as complying with 35 U.S.C. 371(c)(4) and § 1.495(c). However, if the oath or declaration does not also meet the requirements of § 1.63, a supplemental oath or declaration in compliance with § 1.63 or an application date sheet will be required in accordance with § 1.67.

(d) If the oath or declaration filed pursuant to 35 U.S.C. 371(c)(4) and this section names an inventive entity different from the inventive entity set forth in the international application, or if a change to the inventive entity has been effected under PCT Rule 92*bis* subsequent to the execution of any oath or declaration which was filed in the application under PCT Rule 4.17(iv) or this section and the inventive entity thus changed is different from the inventive entity identified in any such oath or declaration, applicant must submit:

(1) A statement from each person being added as an inventor and from each person being deleted as an inventor that any error in inventorship in the international application occurred without deceptive intention on his or her part;

(2) The processing fee set forth in § 1.17(i);

(3) If an assignment has been executed by any of the original named inventors, the written consent of the assignee (see § 3.73(b) of this chapter); and

(4) Any new oath or declaration required by paragraph (f) of this section.

(f) A new oath or declaration in accordance with this section must be filed to satisfy 35 U.S.C. 371(c)(4) if the declaration was filed under PCT Rule 4.17(iv), and:

(1) There was a change in the international filing date pursuant to PCT Rule 20.2 after the declaration was executed; or

(2) A change in the inventive entity was effected under PCT Rule 92*bis* after the declaration was executed and no declaration which sets forth and is executed by the inventive entity as so changed has been filed in the application.

Dated: December 27, 2001.

**James E. Rogan,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

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