

§ 1.491

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(b) Protest under paragraph (a) of this section will be examined by the Commissioner or the Commissioner's designee. In the event that the applicant's protest is determined to be justified, the additional fees or a portion thereof will be refunded.

(c) An applicant who desires that a copy of the protest and the decision thereon accompany the international preliminary examination report when forwarded to the Elected Offices, may notify the International Preliminary Examining Authority to that effect any time prior to the issuance of the international preliminary examination report. Thereafter, such notification should be directed to the International Bureau.

[52 FR 20050, May 28, 1987]

NATIONAL STAGE

§ 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.

[67 FR 523, Jan. 4, 2002]

§ 1.492 National stage fees.

The following fees and charges are established for international applications entering the national stage under 35 U.S.C. 371:

(a) The basic national fee:

(1) Where an international preliminary examination fee as set forth in § 1.482 has been paid on the international application to the United States Patent and Trademark Office:

By a small entity (§ 1.27(a))—\$355.00
By other than a small entity—\$710.00

(2) Where no international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office, but an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark

Office as an International Searching Authority:

By a small entity (§ 1.27(a))—\$370.00
By other than a small entity—\$740.00

(3) Where no international preliminary examination fee as set forth in § 1.482 has been paid and no international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office:

By a small entity (§ 1.27(a))—\$520.00
By other than a small entity—\$1,040.00

(4) Where the international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office and the international preliminary examination report states that the criteria of novelty, inventive step (non-obviousness), and industrial applicability, as defined in PCT Article 33(1) to (4) have been satisfied for all the claims presented in the application entering the national stage (see § 1.496(b)):

By a small entity (§ 1.27(a)) \$50.00
By other than a small entity ..... \$100.00

(5) Where a search report on the international application has been prepared by the European Patent Office or the Japanese Patent Office:

By a small entity (§ 1.27(a))—\$445.00
By other than a small entity—\$890.00

(b) In addition to the basic national fee, for filing or later presentation of each independent claim in excess of 3:

By a small entity (§ 1.27(a))—\$42.00
By other than a small entity—\$84.00

(c) In addition to the basic national fee, for filing or later presentation of each claim (whether independent or dependent) in excess of 20 (Note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes.):

By a small entity (§ 1.27(a)) \$9.00
By other than a small entity ..... \$18.00

(d) In addition to the basic national fee, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:

By a small entity (§ 1.27(a))—\$140.00

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By other than a small entity—\$280.00

(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.

(g) If the additional fees required by paragraphs (b), (c), and (d) of this section are not paid on presentation of the claims for which the additional fees are due, they must be paid or the claims cancelled by amendment, prior to the expiration of the time period set for reply by the Office in any notice of fee deficiency.

[56 FR 65154, Dec. 13, 1991, as amended at 57 FR 38196, Aug. 21, 1992; 58 FR 4346, Jan. 14, 1993; 60 FR 41023, Aug. 11, 1995; 61 FR 39588, July 30, 1996; 62 FR 40453, July 29, 1997; 62 FR 53200, Oct. 10, 1997; 63 FR 67580, Dec. 8, 1998; 64 FR 67777, Dec. 3, 1999; 65 FR 78960, Dec. 18, 2000; 66 FR 39450, July 31, 2001; 67 FR 523, Jan. 4, 2002]

**§ 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 26ter.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