

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.

(f) Verification of the translation of the international application or any other document pertaining to an international application may be required where it is considered necessary, if the international application or other document was filed in a language other than English.

(g) The documents and fees submitted under paragraphs (b) and (c) of this section must, except for a copy of the international publication or translation of the international application that is identified as provided in §1.417, be clearly identified as a submission to enter the national stage under 35 U.S.C. 371. Otherwise, the submission will be considered as being made under 35 U.S.C. 111(a).

(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.

[52 FR 20051, May 28, 1987, as amended at 58 FR 4347, Jan. 14, 1993; 63 FR 29620, June 1, 1998; 65 FR 57060, Sept. 20, 2000; 66 FR 16006, Mar. 22, 2001; 66 FR 28054, May 22, 2001; 67 FR 523, Jan. 4, 2002]

**§ 1.496 Examination of international applications in the national stage.**

(a) International applications which have complied with the requirements of 35 U.S.C. 371(c) will be taken up for action based on the date on which such

requirements were met. However, unless an express request for early processing has been filed under 35 U.S.C. 371(f), no action may be taken prior to one month after entry into the national stage.

(b) A national stage application filed under 35 U.S.C. 371 may have paid therein the basic national fee as set forth in §1.492(a)(4) if it contains, or is amended to contain, at the time of entry into the national stage, only claims which have been indicated in an international preliminary examination report prepared by the United States Patent and Trademark Office as satisfying the criteria of PCT Article 33(1)-(4) as to novelty, inventive step and industrial applicability. Such national stage applications in which the basic national fee as set forth in §1.492(a)(4) has been paid may be amended subsequent to the date of entry into the national stage only to the extent necessary to eliminate objections as to form or to cancel rejected claims. Such national stage applications in which the basic national fee as set forth in §1.492(a)(4) has been paid will be taken up out of order.

[52 FR 20051, May 28, 1987]

**§ 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 26ter.1, he or she must file an oath or declaration that:

(1) Is executed in accordance with either §§1.66 or 1.68;

(2) Identifies the application to which it is directed;

(3) Identifies each inventor and the country of citizenship of each inventor; and

(4) States that the person making the oath or declaration believes the named inventor or inventors to be the original and first inventor or inventors of the subject matter which is claimed and for which a patent is sought.

(b)(1) The oath or declaration must be made by all of the actual inventors

except as provided for in §§1.42, 1.43 or 1.47.

(2) If the person making the oath or declaration or any supplemental oath or declaration is not the inventor (§§1.42, 1.43, or §1.47), the oath or declaration shall state the relationship of the person to the inventor, and, upon information and belief, the facts which the inventor would have been required to state. If the person signing the oath or declaration is the legal representative of a deceased inventor, the oath or declaration shall also state that the person is a legal representative and the citizenship, residence and mailing address of the legal representative.

(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 data 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.

(e) The Office may require such other information as may be deemed appropriate under the particular circumstances surrounding the correction of inventorship.

(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.

(g) If a priority claim has been corrected or added pursuant to PCT Rule 26*bis* during the international stage after the declaration of inventorship was executed in the international application under PCT Rule 4.17(iv), applicant will be required to submit either a new oath or declaration or an application data sheet as set forth in §1.76 correctly identifying the application upon which priority is claimed.

[61 FR 42807, Aug. 19, 1996, as amended at 65 FR 54677, Sept. 8, 2000; 66 FR 16006, Mar. 22, 2001; 66 FR 28054, May 22, 2001; 67 FR 524, Jan. 4, 2002; 67 FR 6075, Feb. 8, 2002]

#### §1.499 Unity of invention during the national stage.

If the examiner finds that a national stage application lacks unity of invention under §1.475, the examiner may in an Office action require the applicant in the response to that action to elect the invention to which the claims shall be restricted. Such requirement may be made before any action on the merits but may be made at any time before the final action at the discretion of the examiner. Review of any such requirement is provided under §§1.143 and 1.144.

[58 FR 4347, Jan. 14, 1993]