

report, in respect of the entire international application and indicate that unity of invention is lacking and specify the reasons therefor without extending an invitation to restrict or pay additional fees. No international preliminary examination will be conducted on inventions not previously searched by an International Searching Authority.

(2) Invite the applicant to restrict the claims or pay additional fees, pointing out the categories of invention found, within a set time limit which will not be extended. No international preliminary examination will be conducted on inventions not previously searched by an International Searching Authority, or

(3) If applicant fails to restrict the claims or pay additional fees within the time limit set for reply, the International Preliminary Examining Authority will issue a written opinion and/or establish an international preliminary examination report on the main invention and shall indicate the relevant facts in the said report. In case of any doubt as to which invention is the main invention, the invention first mentioned in the claims and previously searched by an International Searching Authority shall be considered the main invention.

(c) Lack of unity of invention may be directly evident before considering the claims in relation to any prior art, or after taking the prior art into consideration, as where a document discovered during the search shows the invention claimed in a generic or linking claim lacks novelty or is clearly obvious, leaving two or more claims joined thereby without a common inventive concept. In such a case the International Preliminary Examining Authority may raise the objection of lack of unity of invention.

[52 FR 20049, May 28, 1987, as amended at 58 FR 4346, Jan. 14, 1993; 62 FR 53200, Oct. 10, 1997]

§ 1.489 Protest to lack of unity of invention before the International Preliminary Examining Authority.

(a) If the applicant disagrees with the holding of lack of unity of invention by the International Preliminary Examining Authority, additional fees may be paid under protest, accompanied by a

request for refund and a statement setting forth reasons for disagreement or why the required additional fees are considered excessive, or both.

(b) Protest under paragraph (a) of this section will be examined by the Director or the Director'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 for an international application entering the national stage under 35 U.S.C. 371 if the basic national fee was not paid before December 8, 2004:

By a small entity (§1.27(a)) ...	\$155.00
By other than a small entity	\$310.00

(b) Search fee for an international application entering the national stage under 35 U.S.C. 371 if the basic national fee was not paid before December 8, 2004:

§ 1.492

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(1) If an international preliminary examination report on the international application prepared by the United States International Preliminary Examining Authority or a written opinion on the international application prepared by the United States International Searching Authority 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 of the claims presented in the application entering the national stage:

By a small entity (§1.27(a)) ... \$0.00
By other than a small entity \$0.00

(2) If the 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)) .. \$50.00
By other than a small entity \$100.00

(3) If an international search report on the international application has been prepared by an International Searching Authority other than the United States International Searching Authority and is provided, or has been previously communicated by the International Bureau, to the Office:

By a small entity (§1.27(a)) .. \$205.00
By other than a small entity \$410.00

(4) In all situations not provided for in paragraphs (b)(1), (b)(2), or (b)(3) of this section:

By a small entity (§1.27(a)) .. \$255.00
By other than a small entity \$510.00

(c) The examination fee for an international application entering the national stage under 35 U.S.C. 371 if the basic national fee was not paid before December 8, 2004:

(1) If an international preliminary examination report on the international application prepared by the United States International Preliminary Examining Authority or a written opinion on the international application prepared by the United States International Searching Authority 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 of the claims presented in the application entering the national stage:

By a small entity (§1.27(a)) ... \$0.00
By other than a small entity \$0.00

(2) In all situations not provided for in paragraph (c)(1) of this section:

By a small entity (§1.27(a)) ... \$105.00
By other than a small entity \$210.00

(d) In addition to the basic national fee, for filing or on a later presentation at any other time of each claim in independent form in excess of 3:

By a small entity (§1.27(a)) ... \$105.00
By other than a small entity \$210.00

(e) In addition to the basic national fee, for filing or on later presentation at any other time of each claim (whether dependent or independent) 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)) ... \$25.00
By other than a small entity \$50.00

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

By a small entity (§1.27(a)) ... \$185.00
By other than a small entity \$370.00

(g) If the excess claims fees required by paragraphs (d) and (e) of this section and multiple dependent claim fee required by paragraph (f) of this section are not paid with the basic national fee or on later presentation of the claims for which the excess claims or multiple dependent claim fees are due, the fees required by paragraphs (d), (e), and (f) of this section must be paid or the claims canceled by amendment prior to the expiration of the time period set for reply by the Office in any notice of fee deficiency in order to avoid abandonment.

(h) Surcharge for filing any of the search fee, the examination fee, or the oath or declaration after the date of the commencement of the national stage (§1.491(a)) pursuant to §1.495(c):

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

(i) 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.

(j) Application size fee for any international application for which the basic national fee was not paid before December 8, 2004, the specification and drawings of which exceed 100 sheets of paper, for each additional 50 sheets or fraction thereof (see § 1.52(f) for applications submitted in whole or in part on an electronic medium):

By a small entity (§ 1.27(a)) ...	\$130.00
By other than a small entity	\$260.00

[70 FR 3892, Jan. 27, 2005, as amended at 70 FR 5054, Feb. 1, 2005; 70 FR 30365, May 26, 2005; 70 FR 35378, June 20, 2005; 72 FR 46902, Aug. 22, 2007; 72 FR 55055, Sept. 28, 2007]

§ 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)(1) If applicant complies with paragraph (b) of this section before expiration of thirty months from the priority date, the Office will notify the applicant if he or she has omitted any of:

(i) A translation of the international application, as filed, into the English

language, if it was originally filed in another language and if any English language translation of the publication of the international application previously submitted under 35 U.S.C. 154(d) (§ 1.417) is not also a translation of the international application as filed (35 U.S.C. 371(c)(2));

(ii) 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;

(iii) The search fee set forth in § 1.492(b);

(iv) The examination fee set forth in § 1.492(c); and

(v) Any application size fee required by § 1.492(j).

(2) A notice under paragraph (c)(1) of this section will set a period of time within which applicant must provide any omitted translation, oath or declaration of the inventor, search fee set forth in § 1.492(b), examination fee set forth in § 1.492(c), and any application size fee required by § 1.492(j) in order to avoid abandonment of the application.

(3) The payment of the processing fee set forth in § 1.492(i) 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(h) is required for acceptance of any of the search fee, the examination fee, or the oath or declaration of the inventor after the date of the commencement of the national stage (§ 1.491(a)).

(4) 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.