§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) National stage applications having paid therein the search fee as set forth in §1.492(b)(1) and the examination fee as set forth in §1.492(c)(1) 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 will be advanced out of turn for examination.

§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 92bis 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
§ 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.

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Subpart D—Ex Parte Reexamination of Patents

SOURCE: 46 FR 29185, May 29, 1981, unless otherwise noted.

§ 1.501 Citation of prior art in patent files.

(a) At any time during the period of enforceability of a patent, any person may cite, to the Office in writing, prior art consisting of patents or printed publications which that person states to be pertinent and applicable to the patent and believes to have a bearing on the patentability of any claim of the patent. If the citation is made by the patent owner, the explanation of pertinency and applicability may include an explanation of how the claims differ from the prior art. Such citations shall be entered in the patent file except as set forth in §§1.502 and 1.902.

(b) If the person making the citation wishes his or her identity to be excluded from the patent file and kept confidential, the citation papers must be filed with the Office in duplicate.

(c) Citation of patents or printed publications by the public in patent files should either:

(1) Reflect that a copy of the same has been mailed to the patent owner at the address as provided for in §1.33(c); or in the event service is not possible

(2) Be filed with the Office in duplicate.

[58 FR 4347, Jan. 14, 1993]