

**§ 1.495**

**37 CFR Ch. I (7-1-14 Edition)**

(c) The examination fee for an international application entering the national stage under 35 U.S.C. 371:

(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 micro entity (§1.29) ....	\$0.00
By a small entity (§1.27(a))	0.00
By other than a small or micro entity .....	0.00

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

By a micro entity (§1.29)	\$180.00
By a small entity (§1.27(a))	\$360.00
By other than a small or micro entity .....	720.00

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

By a micro entity (§1.29) ....	\$105.00
By a small entity (§1.27(a))	210.00
By other than a small or micro entity .....	420.00

(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 micro entity (§1.29) ....	\$20.00
By a small entity (§1.27(a))	40.00
By other than a small or micro entity .....	80.00

(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 micro entity (§1.29) ....	\$195.00
By a small entity (§1.27(a))	390.00
By other than a small or micro entity .....	780.00

(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 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 micro entity (§1.29) ....	\$35.00
By a small entity (§1.27(a))	70.00
By other than a small or micro entity .....	140.00

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

By a micro entity (§1.29) ....	\$35.00
By a small entity (§1.27(a))	70.00
By other than a small or micro entity .....	140.00

(j) Application size fee for any international application, the specification and drawings of which exceed 100 sheets of paper, for each additional 50 sheets or fraction thereof:

By a micro entity (§1.29) ....	\$100.00
By a small entity (§1.27(a))	200.00
By other than a small or micro entity .....	400.00

[78 FR 4290, Jan. 18, 2013]

**§ 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.

(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 inventor's oath or declaration (35 U.S.C. 371(c)(4) and § 1.497), if a declaration of inventorship in compliance with § 1.63 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 time period within which applicant must provide any omitted translation, 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 inventor's oath or declaration must also be filed within the period specified in paragraph (c)(2) of this section, except that the filing of the inventor's oath or declaration may be postponed until the application is oth-

erwise in condition for allowance under the conditions specified in paragraphs (c)(3)(i) through (c)(3)(iii) of this section.

(i) The application contains an application data sheet in accordance with § 1.76 filed prior to the expiration of the time period set in any notice under paragraph (c)(1) identifying:

(A) Each inventor by his or her legal name;

(B) A mailing address where the inventor customarily receives mail, and residence, if an inventor lives at a location which is different from where the inventor customarily receives mail, for each inventor.

(ii) The applicant must file each required oath or declaration in compliance with § 1.63, or substitute statement in compliance with § 1.64, no later than the date on which the issue fee for the patent is paid. If the applicant is notified in a notice of allowability that an oath or declaration in compliance with § 1.63, or substitute statement in compliance with § 1.64, executed by or with respect to each named inventor has not been filed, the applicant must file each required oath or declaration in compliance with § 1.63, or substitute statement in compliance with § 1.64, no later than the date on which the issue fee is paid to avoid abandonment. This time period is not extendable under § 1.136 (see § 1.136(c)). The Office may dispense with the notice provided for in paragraph (c)(1) of this section if each required oath or declaration in compliance with § 1.63, or substitute statement in compliance with § 1.64, has been filed before the application is in condition for allowance.

(iii) An international application in which the basic national fee under 35 U.S.C. 41(a)(1)(F) has been paid and for which an application data sheet in accordance with § 1.76 has been filed may be treated as complying with 35 U.S.C. 371 for purposes of eighteen-month publication under 35 U.S.C. 122(b) and § 1.211 *et seq.*

(4) 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 inventor's oath or declaration after the date of the commencement of the national stage (§1.491(a)).

(5) 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.

(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 be identified as a submission to enter the national stage under 35 U.S.C. 371. If the documents and fees contain conflicting indications as between an application under 35 U.S.C. 111 and a submission to enter the national stage under 35 U.S.C. 371, the documents and fees will be treated as a submission to enter the national stage under 35 U.S.C. 371.

(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.

[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; 67 FR 523, Jan. 4, 2002; 68 FR 71007, Dec. 22, 2003; 70 FR 3892, Jan. 27, 2005; 70 FR 30365, May 26, 2005; 72 FR 46843, Aug. 21, 2007; 74 FR 52691, Oct. 14, 2009; 77 FR 48824, Aug. 14, 2012; 78 FR 62407, Oct. 21, 2013]

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

National stage applications having paid therein the search fee as set forth in §1.492(b)(1) and examination fee as set forth in §1.492(c)(1) may be amended subsequent to the date of commencement of national stage processing 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.

[77 FR 48824, Aug. 14, 2012]

#### **§ 1.497 Inventor's 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 §1.63 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, the applicant must file the inventor's oath or declaration. The inventor, or each individual who is a joint inventor of a claimed invention, in an application for patent must execute an oath or declaration in accordance with the conditions and requirements of §1.63, except as provided for in §1.64.

(b) An oath or declaration under §1.63 will be accepted as complying with 35 U.S.C. 371(c)(4) if it complies with the requirements of §§1.63(a), (c) and (g). A substitute statement under §1.64 will be accepted as complying with 35 U.S.C. 371(c)(4) if it complies with the requirements of §§1.64(b)(1), (c) and (e) and identifies the person executing the substitute statement. If a newly executed inventor's oath or declaration under §1.63 or substitute statement