

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-622 effective Nov. 8, 1984, see section 406(a) of Pub. L. 98-622, set out as a note under section 351 of this title.

CHAPTER 37—NATIONAL STAGE

Sec.	
371.	National stage: Commencement.
372.	National stage: Requirements and procedure.
[373.	Repealed.]
374.	Publication of international application.
375.	Patent issued on international application: Effect.
376.	Fees.

AMENDMENTS

2013—Pub. L. 112-274, §1(i), Jan. 14, 2013, 126 Stat. 2457, struck out item 373 “Improper applicant”.

1999—Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4507(12)], as added by Pub. L. 107-273, div. C, title III, §13205(2)(F), Nov. 2, 2002, 116 Stat. 1903, substituted “Publication of international application” for “Publication of international application: Effect” in item 374.

§ 371. National stage: Commencement

(a) Receipt from the International Bureau of copies of international applications with any amendments to the claims, international search reports, and international preliminary examination reports including any annexes thereto may be required in the case of international applications designating or electing the United States.

(b) Subject to subsection (f) of this section, the national stage shall commence with the expiration of the applicable time limit under article 22(1) or (2), or under article 39(1)(a) of the treaty.

(c) The applicant shall file in the Patent and Trademark Office—

(1) the national fee provided in section 41(a);

(2) a copy of the international application, unless not required under subsection (a) of this section or already communicated by the International Bureau, and a translation into the English language of the international application, if it was filed in another language;

(3) amendments, if any, to the claims in the international application, made under article 19 of the treaty, unless such amendments have been communicated to the Patent and Trademark Office by the International Bureau, and a translation into the English language if such amendments were made in another language;

(4) an oath or declaration of the inventor (or other person authorized under chapter 11) complying with the requirements of section 115 and with regulations prescribed for oaths or declarations of applicants;

(5) a translation into the English language of any annexes to the international preliminary examination report, if such annexes were made in another language.

(d) The requirements with respect to the national fee referred to in subsection (c)(1), the translation referred to in subsection (c)(2), and the oath or declaration referred to in subsection (c)(4) of this section shall be complied with by the date of the commencement of the national stage or by such later time as may be fixed by the Director. The copy of the international application referred to in subsection (c)(2) shall be

submitted by the date of the commencement of the national stage. Failure to comply with these requirements shall be regarded as abandonment of the application by the parties thereof, unless it be shown to the satisfaction of the Director that such failure to comply was unavoidable. The payment of a surcharge may be required as a condition of accepting the national fee referred to in subsection (c)(1) or the oath or declaration referred to in subsection (c)(4) of this section if these requirements are not met by the date of the commencement of the national stage. The requirements of subsection (c)(3) of this section shall be complied with by the date of the commencement of the national stage, and failure to do so shall be regarded as a cancellation of the amendments to the claims in the international application made under article 19 of the treaty. The requirement of subsection (c)(5) shall be complied with at such time as may be fixed by the Director and failure to do so shall be regarded as cancellation of the amendments made under article 34(2)(b) of the treaty.

(e) After an international application has entered the national stage, no patent may be granted or refused thereon before the expiration of the applicable time limit under article 28 or article 41 of the treaty, except with the express consent of the applicant. The applicant may present amendments to the specification, claims and drawings of the application after the national stage has commenced.

(f) At the express request of the applicant, the national stage of processing may be commenced at any time at which the application is in order for such purpose and the applicable requirements of subsection (c) of this section have been complied with.

(Added Pub. L. 94-131, §1, Nov. 14, 1975, 89 Stat. 688; amended Pub. L. 98-622, title IV, §§402(a)-(d), 403(a), Nov. 8, 1984, 98 Stat. 3391, 3392; Pub. L. 99-616, §7, Nov. 6, 1986, 100 Stat. 3486; Pub. L. 102-204, §5(g)(2), Dec. 10, 1991, 105 Stat. 1641; Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4732(a)(10)(A)], Nov. 29, 1999, 113 Stat. 1536, 1501A-582; Pub. L. 107-273, div. C, title III, §13206(a)(20), (b)(1)(B), Nov. 2, 2002, 116 Stat. 1905, 1906; Pub. L. 112-29, §20(i)(5), (j), Sept. 16, 2011, 125 Stat. 335; Pub. L. 112-211, title II, §202(b)(9), Dec. 18, 2012, 126 Stat. 1536.)

AMENDMENT OF SUBSECTION (d)

Pub. L. 112-211, title II, §§202(b)(9), 203, Dec. 18, 2012, 126 Stat. 1536, provided that, effective on the date that is 1 year after Dec. 18, 2012, applicable to patents issued before, on, or after that effective date and patent applications pending on or filed after that effective date, and not effective with respect to patents in litigation commenced before that effective date, subsection (d) of this section is amended, in the third sentence, by striking “, unless it be shown to the satisfaction of the Director that such failure to comply was unavoidable”. See 2012 Amendment note below.

AMENDMENTS

2012—Subsec. (d). Pub. L. 112-211 struck out “, unless it be shown to the satisfaction of the Director that such failure to comply was unavoidable” after “by the parties thereof”.