

CHAPTER 37—NATIONAL STAGE

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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. 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.)

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”.

2011—Subsec. (b). Pub. L. 112-29, §20(i)(5), substituted “of the treaty.” for “of the treaty”.

Subsec. (c)(1). Pub. L. 112-29, §20(j), struck out “of this title” after “41(a)”.

Subsec. (c)(4). Pub. L. 112-29, §20(j), struck out “of this title” after “11” and after “115”.

2002—Subsec. (d). Pub. L. 107-273, §13206(b)(1)(B), made technical correction to directory language of Pub. L. 106-113. See 1999 Amendment note below.

Pub. L. 107-273, §13206(a)(20), inserted period at end.
1999—Subsec. (d). Pub. L. 106-113, as amended by Pub. L. 107-273, §13206(b)(1)(B), substituted “Director” for “Commissioner” wherever appearing.

1991—Subsec. (c)(1). Pub. L. 102-204 substituted “provided in section 41(a) of this title” for “prescribed under section 376(a)(4) of this part”.

1986—Subsec. (a). Pub. L. 99-616, §7(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “Receipt from the International Bureau of copies of international applications with amendments to the claims, if any, and international search reports may be required in the case of all international applications designating the United States.”

Subsec. (b). Pub. L. 99-616, §7(b), amended subsec. (b) generally, substituting “, or under article 39(1)(a) of the treaty” for “of the treaty.”

Subsec. (c)(4), (5). Pub. L. 99-616, §7(c), (d), substituted a semicolon for a period at end of par. (4) and added par. (5).

Subsec. (d). Pub. L. 99-616, §7(e), inserted “The requirement of subsection (c)(5) shall be complied with at such time as may be fixed by the Commissioner and failure to do so shall be regarded as cancellation of the amendments made under article 34(2)(b) of the treaty” at end.

Subsec. (e). Pub. L. 99-616, §7(f), inserted “or article 41” after “article 28”.

1984—Subsec. (a). Pub. L. 98-622, §402(a), substituted “may be” for “is” and struck out “, except those filed in the Patent Office” after “United States”, which amendment was executed by striking out “, except those filed in the Patent and Trademark Office” as the probable intent of Congress in view of the amendment by section 403(a) of Pub. L. 98-622. See Effective Date of 1984 Amendment note below.

Pub. L. 98-622, §403(a), substituted “Patent and Trademark Office” for “Patent Office”.

Subsec. (b). Pub. L. 98-622 struck out “, at which time the applicant shall have complied with the applicable requirements specified in subsection (c) of this section” after “of the treaty”.

Subsec. (c). Pub. L. 98-622, §403(a), substituted “Patent and Trademark Office” for “Patent Office” in provisions preceding par. (1) and in par. (3).

Subsec. (c)(2). Pub. L. 98-622, §402(c)(1), (2), substituted “communicated by” for “received from” and struck out “verified” before “translation”.

Subsec. (d). Pub. L. 98-622, §402(d), substituted provisions setting forth time periods for compliance with the requirements of subsec. (c), payments of surcharges, and the effect of failure to comply for provisions related only to the effect of failure to comply with the requirements of subsec. (c).

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-211 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, see section 203 of Pub. L. 112-211, set out as an Effective Date note under section 27 of this title.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112-29 effective upon the expiration of the 1-year period beginning on Sept. 16, 2011, and applicable to proceedings commenced on or after that effective date, see section 20(l) of Pub. L. 112-29, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106-113, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-616 effective July 1, 1987, and applicable to all international applications pending before or after that date, see section 9 of Pub. L. 99-616, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 402(a)–(d) of Pub. L. 98-622 effective six months after Nov. 8, 1984, see section 406(b) of Pub. L. 98-622, set out as a note under section 3 of this title.

Amendment by section 403(a) of 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.

EFFECTIVE DATE

Chapter effective Jan. 24, 1978, and applicable to international and national applications filed, on and

after that date, see section 11 of Pub. L. 94-131, set out as a note under section 351 of this title.

§372. National stage: Requirements and procedure

(a) All questions of substance and, within the scope of the requirements of the treaty and Regulations, procedure in an international application designating the United States shall be determined as in the case of national applications regularly filed in the Patent and Trademark Office.

(b) In case of international applications designating but not originating in, the United States—

(1) the Director may cause to be reexamined questions relating to form and contents of the application in accordance with the requirements of the treaty and the Regulations;

(2) the Director may cause the question of unity of invention to be reexamined under section 121, within the scope of the requirements of the treaty and the Regulations; and

(3) the Director may require a verification of the translation of the international application or any other document pertaining to the application if the application or other document was filed in a language other than English.

(Added Pub. L. 94-131, §1, Nov. 14, 1975, 89 Stat. 689; amended Pub. L. 98-622, title IV, §§402(e), (f), 403(a), Nov. 8, 1984, 98 Stat. 3392; 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(b)(1)(B), Nov. 2, 2002, 116 Stat. 1906; Pub. L. 112-29, §20(j), Sept. 16, 2011, 125 Stat. 335.)

AMENDMENTS

2011—Subsec. (b)(2). Pub. L. 112-29 struck out “of this title” after “121”.

2002—Subsec. (b). Pub. L. 107-273 made technical correction to directory language of Pub. L. 106-113. See 1999 Amendment note below.

1999—Subsec. (b). Pub. L. 106-113, as amended by Pub. L. 107-273, substituted “Director” for “Commissioner” wherever appearing.

1984—Subsec. (a). Pub. L. 98-622, §403(a), substituted “Patent and Trademark Office” for “Patent Office”.

Subsec. (b)(3). Pub. L. 98-622, §402(e), added par. (3).

Subsec. (c). Pub. L. 98-622, §402(f), struck out subsec. (c) which related to cancellation of claims and payment of special fees.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112-29 effective upon the expiration of the 1-year period beginning on Sept. 16, 2011, and applicable to proceedings commenced on or after that effective date, see section 20(l) of Pub. L. 112-29, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106-113, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 402(e), (f) of Pub. L. 98-622 effective six months after Nov. 8, 1984, see section 406(b) of Pub. L. 98-622, set out as a note under section 3 of this title.

Amendment by section 403(a) of 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.