

United States Code Annotated - 2000

35 U.S.C.A. § 371

UNITED STATES CODE ANNOTATED

TITLE 35. PATENTS

PART IV—PATENT COOPERATION TREATY**CHAPTER 37—NATIONAL STAGE**

§ 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) of this title;

(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 of this title) complying with the requirements of section 115 of this title 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.

CREDIT(S)

1984 Main Volume

(Added Pub.L. 94-131, § 1, Nov. 14, 1975, 89 Stat. 688.)

2006 Pocket Part Update

(As amended Pub.L. 98-622, Title IV, §§ 402(a) to (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) [S. 1948, Title IV, § 4732(a)(10)(A)], Nov. 29, 1999, 113 Stat. 1536, 1537-____.)

HISTORICAL AND STATUTORY NOTES

Pub.L. 106-113 [S. 1948, § 4732(a)(10)(A)], struck out “Commissioner” and inserted “Director” throughout the section.

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”.

Subsec. (a). Pub.L. 99-616, § 7(a), substituted “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” for “Receipt from the International Bureau of copies of international applications with amendments to the claims, of 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), added “or under article 39(1)(a)” following “or (2)”.

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

Subsec. (d). Pub.L. 99-616, § 7(e), added “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”.

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

Subsec. (a). Pub.L. 98-622, § 402(a)(1) substituted “may be” for “is” before “required in the case”.

Pub.L. 98-622, § 402(a)(2) struck out “, except those filed in the Patent Office” at the end thereof.

Subsec. (b). Pub.L. 98-622 § 402(b) substituted a period for “, at which time the applicant shall have complied with the applicable requirements specified in subsection (c) of this section.”

Subsec. (c). Pub.L. 98-622, § 403(a) substituted “Patent and Trademark Office” for “Patent Office”. See Change of Name note under this section.

Subsec. (c)(2). Pub.L. 98-622, § 402(c)(1) substituted “communicated by” for “received from” before “the International Bureau”.

Pub.L. 98-622, § 402(c)(2) 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 with subsec. (c), for former provisions which related only to the effect of failure to comply with the requirements of subsec. (c).

Pub.L. 98-622, § 403(a) substituted “Patent and Trademark Office” for “Patent Office”. See Change of Name note under this section.

References to the Patent Office in subsecs. (a) and (c) deemed references to the Patent and Trademark Office pursuant to Pub.L. 93-596, § 3, Jan. 2, 1975, 88 Stat. 1949, set out as a note under § 1 of this title.

Amendment by Pub.L. 106-113 [S. 1948, § 4732(a)(10)(A)], effective 4 months after the date of enactment of this Act [Nov. 29, 1999, which is the date of enactment of Pub.L. 106-113, 113 Stat. 1501, which in Div. B, § 1000(a)(9), enacted into law this Act as an Appendix], see Pub.L. 106-113 [S. 1948, § 4731], set out as a note under section 1 of this title.

Amendment by Pub.L. 102-204 effective Dec. 10, 1991, except as otherwise provided, see section 13 of Pub.L. 102-204, set out as a note under section 41 of this title.

Amendment by Pub.L. 99-616 to come into force on the same day as the effective date of entry into force of chapter II of the Patent Cooperation Treaty with respect to the United States, by virtue of the withdrawal of the declaration under article 64(1)(a) of the Patent Cooperation Treaty, such amendment to apply to all international applications pending before or after its effective date, see section 9 of Pub.L. 99-616, set out as a note under section 351 of this title.

[The Patent Cooperation Treaty became effective for the United States on January 24, 1978. The United States, however, was one of six countries which had reservations not to be bound by Chapter II. The document removing the reservation as to Chapter II was deposited with the Director General of the World Intellectual Property Organization on April 1, 1987. Accordingly, Chapter II of the Treaty for the United States of America, Pub.L. 99-616 became effective 3 months later on July 1, 1987. See [52 Federal Register 20040](#), May 28, 1987.]

Amendment by section 403(a) of Pub.L. 98-622, effective on Nov. 8, 1984, see section 406(a) of Pub.L. 98-622, set out as an Effective Date of 1984 Amendment note under section 351 of this title.

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 an Effective Date of 1984 Amendment note under section 3 of this title.

Section effective Jan. 24, 1978, and applicable to international and national applications filed on and after that date, see § 11 of Pub.L. 94-131, set out as a note under § 351 of this title.

For legislative history and purpose of Pub.L. 94-131, see 1975 U.S. Code Cong. and Adm. News, p. 1220.

For legislative history and purpose of Pub.L. 98-622, see 1984 U. S. Code Cong. and Adm. News, p. 5827. See, also, Pub.L. 99-616, 1986 U.S. Code Cong. and Adm. News, p. 5911; Pub.L. 102-204, 1991 U.S. Code Cong. and Adm. News, p. 1320; Pub.L. 106-113, 1999 U.S. Code Cong. and Adm. News, p. 290.

CROSS REFERENCES

Conditions for patentability; loss of right to patent by description in international application, see [35 USCA § 102](#).

Designation of United States on withdrawn application to have no effect if withdrawn before compliance with provisions of this section, see [35 USCA § 366](#).


FEDERAL PRACTICE AND PROCEDURE

Patents, Fed Proc, L Ed, §§ 60:5, 601-604, 616.

FEDERAL FORMS

13A Fed Procedural Forms L Ed, Patents §§ 52:21, 465.

LIBRARY REFERENCES

Patents  89, 90, 91, 97 et seq.

Business and Commercial Litigation in Federal Courts § 65.15.

C.J.S. Patents §§ 85, 86, 98, 99 to 101, 109.

60 Am Jur 2d, Patents § 36.

60 Am Jur 2d, Patents §§ 18, 117, 432, 862.

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