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requirements of and within the time limits specified by the treaty and the Regulations. Such review may result in a determination that such application be considered as pending in the national stage.

(b) The review under subsection (a) of this section, subject to the same requirements and conditions, may also be requested in those instances where an international application designating the United States is considered withdrawn due to a finding by the International Bureau under article 12(3) of the treaty.

*(Added Nov. 14, 1975, Public Law 94-131, sec. 1, 89 Stat. 687.)*

**35 U. S.C. 368      Secrecy of certain inventions; filing international applications in foreign countries.**

(a) International applications filed in the Patent and Trademark Office shall be subject to the provisions of chapter 17 of this title.

(b) In accordance with article 27(8) of the treaty, the filing of an international application in a country other than the United States on the invention made in this country shall be considered to constitute the filing of an application in a foreign country within the meaning of chapter 17 of this title, whether or not the United States is designated in that international application.

(c) If a license to file in a foreign country is refused or if an international application is ordered to be kept secret and a permit refused, the Patent and Trademark Office when acting as a Receiving Office, International Searching Authority, or International Preliminary Examining Authority, may not disclose the contents of such application to anyone not authorized to receive such disclosure.

*(Added Nov. 14, 1975, Public Law 94-131, sec. 1, 89 Stat. 687; amended Nov. 6, 1986, Public Law 99-616, sec. 6, effective July 1, 1987.)*

*Patent Laws and Regulations***CHAPTER 37—NATIONAL STAGE**

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**35 U.S.C. 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 requirement 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 Commissioner. 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 Commissioner 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 Commissioner 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

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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.

*(Subsection (a) amended Nov. 6, 1986, Public Law, 99-616, sec. 7(a).)*

*(Subsection (b) amended Nov. 6, 1986, Public Law 99-616, sec. 7(b).)*

*(Subsection (c) amended Nov. 6, 1986, Public Law 99-616, sec. 7(d).)*

*(Subsection (d) amended Nov. 6, 1986, Public Law 99-616, sec. 7(e).)*

*(Subsection (e) amended Nov. 6, 1986, Public Law 99-616, sec. 7(f).)*

*(Subsection (f) added Nov. 14, 1975, Public Law 94-131, sec. 1, 89 Stat. 688; amended Nov. 8, 1984, Public Law 98-622, sec. 402(b), 98 Stat. 3391.)*

*(Subsection (c)(1) amended Dec. 10, 1991, Public Law 102-204, sec. 5, 105 Stat. 1640.)*

### **35 U.S.C. 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 Commissioner 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 Commissioner may cause the question of unity of invention to be reexamined under section 121 of this title, within the scope of the requirements of the treaty and the Regulations; and

(3) the Commissioner 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 Nov. 14, 1975, Public Law 94-131, sec. 1, 89 Stat. 689; amended Nov. 8, 1984, Public Law 98-622, sec. 402(e), 98 Stat. 3392.)*

### **35 U.S.C. 373 Improper applicant.**

An international application designating the United States, shall not be accepted by the Patent and Trademark Office for the national stage if it was filed by anyone not qualified under chapter 11 of this title to be an applicant for the purpose of filing a national application in the United States. Such international applications shall not serve as the basis for the benefit of an earlier filing date under section 120 of this title in a subsequently filed application, but may serve as the basis for a claim of the right of priority under subsections (a) through (d) of section 119 of this title, if the United States was not the sole country designated in such international application.

*(Added Nov. 14, 1975, Public Law 94-131, sec. 1, 89 Stat. 689; amended Dec. 8, 1994, Public Law 103-465, sec. 532, 108 Stat. 4809, effective June 8, 1995.)*

### **35 U.S.C. 374 Publication of international application: Effect.**

The publication under the treaty of an international application shall confer no rights and shall have no effect under this title other than that of a printed publication.

*(Added Nov. 14, 1975, Public Law 94-131, sec. 1, 89 Stat. 689.)*

*Patent Laws and Regulations***35 U.S.C. 375      Patent issued on international application: Effect.**

(a) A patent may be issued by the Commissioner based on an international application designating the United States, in accordance with the provisions of this title. Subject to section 102(e) of this title, such patent shall have the force and effect of a patent issued on a national application filed under the provisions of chapter 11 of this title.

(b) Where due to an incorrect translation the scope of a patent granted on an international application designating the United States, which was not originally filed in the English language, exceeds the scope of the international application in its original language, a court of competent jurisdiction may retroactively limit the scope of the patent, by declaring it unenforceable to the extent that it exceeds the scope of the international application in its original language.

*(Added Nov. 14, 1975, Public Law 94-131, sec. 1, 89 Stat. 689.)*

**35 U.S.C. 376      Fees.**

(a) The required payment of the international fee and the handling fee, which amounts are specified in the Regulations, shall be paid in United States currency. The Patent and Trademark Office shall charge a national fee as provided in section 41(a), and may also charge the following fees:

- (1) A transmittal fee (see section 361(d));
- (2) A search fee (see section 361(d));
- (3) A supplemental search fee (to be paid when required);
- (4) A preliminary examination fee and any additional fees (see section 362(b)).
- (5) Such other fees as established by the Commissioner.

(b) The amounts of fees specified in subsection (a) of this section, except the international fee and the handling fee, shall be prescribed by the Commissioner. He may refund any sum paid by mistake or in excess of the fees so specified, or if required under the treaty and the Regulations. The Commissioner may also refund any part of the search fee, the national fee, the preliminary examination fee and any additional fees, where he determines such refund to be warranted.

*(Added Nov. 14, 1975, Public Law 94-131, sec. 1, 89 Stat. 690, amended Nov. 8, 1984, Public Law 98-622, sec. 402(g), 98 Stat. 3392; Nov. 6, 1986, Public Law 99-616, sec. 8(a) & (b).)*

*(Amended Dec. 10, 1991, Public Law 102-204, sec. 5, 105 Stat. 1640.)*

