mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: December 8, 1992.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Rossi, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS JOHN PAUL JONES (DDG 53) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Annex I, section 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, the placement of the after masthead light, and the horizontal distance between the forward and after masthead lights; Annex I, section 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions; and, Annex I, section 3(c) pertaining to placement of task lights not less than 2 meters from the fore and aft centerline of the ship in the athwartship direction; without interfering with its special function as a Navy ship. The Judge Advocate General has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Four of § 706.2 is amended by:

a. Adding the following vessel to Paragraph 15:

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
USS JOHN PAUL JONES.	DDG 53	1.89 meters.

b. Adding the following vessel to Paragraph 16:

Vessel	Number	Obstruction angle relative ship's headings
USS JOHN PAUL JONES.	DDG 53	89.47 thru 106.39 degrees.

3. Table Five of § 706.2 is amended by adding the following vessel:

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained.
USS JOHN PAUL JONES	DDG 53	X	X	X	12.5

Dated: December 8, 1992.

Approved:

W.L. Schachte, Jr.,

Rear Admiral, JAGC, U.S. Navy Acting Judge Advocate General.

[FR Doc. 93–906 Filed 1–13–93; 8:45 am]

BILLING CODE 3810–AE–M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS KEARSARGE (LHD 3) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval amphibious assault ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: December 22, 1992.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Rossi, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS KEARSARGE (LHD 3) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(a), pertaining to the location of the masthead lights over the fore and aft centerline of the ship; Annex 1, section 2(g), pertaining to the distance of the sidelights above the hull; Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship; the placement of the after masthead light and the horizontal distance between the forward and after masthead lights; and Annex I, section 3(b), pertaining to the positioning of the sidelights in relationship to the forward masthead light, without interfering with its special functions as a Navy ship. The Judge Advocate General of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and

contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table II of § 706.2 is amended by adding the following vessel:

TABLE TWO

Vessel number	Masthead lights distance to sted of keel in meters; rule 21 (a)	Forward anchor light distance below flight deck in meters; 2(K), annex I	Forward anchor light, number of rule 30(a)(i)	Aft anchor light, distance below flight deck in meters; rule 21(e) rule 30(a) (ii)	Aft anchor light number of rule 30(a) (ii)	Side lights distance below flight deck in meters 2(g), annex I	Side lights distance forward of forward masthead light in meters; 3(b) annex I	Side lights distance inboard of ship's sides in meters 3(b) annex I
USS KEARSARGE (LHD 3)	8.9	.....	.....	.....	.....	3.0	91	.....

3. Table Five of § 706.2 is amended by adding the following vessel:

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I sec. 3(a)	After masthead light less than 1/2 ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained.
USS Kearsage	LHD 3	.....	X	X	39.5

Dated: December 22, 1992.

Approved:

W.L. Schachte, Jr.,

Rear Admiral, JAGC, U.S. Navy Acting Judge Advocate General.

[FR Doc. 93–951 Filed 1–13–93; 8:45 am]

BILLING CODE 3810–AE–M6

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 10

[Docket No. 920539–2313]

RIN 0651–AA51

Revision of Patent Cooperation Treaty Provisions

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office (Office) is amending the rules of practice relating to applications filed under the Patent Cooperation Treaty (PCT): (1) To amend the rules in accordance with revised regulations under the PCT; (2) to bring the rules regarding applications entering the national stage under 35 U.S.C. 371 more in line with existing regulations applicable to national applications filed under 35 U.S.C. 111; and (3) to clarify existing practice under the PCT. The changes will result in more streamlined and simplified procedures for filing and prosecuting international and national stage applications under the PCT.

EFFECTIVE DATE: May 1, 1993.

FOR FURTHER INFORMATION CONTACT: Vincent Turner by telephone at (703) 305–9384 or by mail addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231 and marked to the attention of Vincent Turner (Crystal Park 2, room 919).

SUPPLEMENTARY INFORMATION: The Office published a notice of proposed rulemaking relating to revision of the Patent Cooperation Treaty provisions, in the **Federal Register**, 57 FR 29248 (July 1, 1992) and in the Official Gazette, 1140 Off. Gaz. Pat. Office 27 (July 14, 1992). No oral hearing was held. Eight individuals or organizations submitted written comments in response to the notice of proposed rulemaking. The eight written comments are available for public inspection in the Office of the Assistant Commissioner for Patents, room 919, Crystal Park II, 2121 Crystal Drive, Arlington, VA.

Familiarity with the notice of proposed rulemaking is assumed. Changes in the text of the rules published for comment in the notice of proposed rulemaking are discussed. Comments received in writing in response to the notice of proposed rulemaking are discussed.

This rule change will improve filing and processing procedures for applicants both in the filing of international applications and in the filing of national stage applications under 35 U.S.C. 371.

Background

During the first 14 years under the PCT, the annual volume of international patent applications filed in the U.S. Receiving Office has increased from just under 100 to almost 10,000 in fiscal year 1991. The volume of U.S. national stage applications has shown similar growth to the point that the U.S. is now designated more than 10,000 times each year by applicants filing international applications under the PCT. Historically, approximately 60% of those applicants that designate the U.S. enter the national stage in the United States.

On July 8 to 12, 1991, representatives of the patent offices of the member countries, in a series of meetings held in Geneva, Switzerland, agreed upon several changes to the PCT regulations which are designed to make the PCT more user-friendly. These adopted changes require corresponding changes in Title 37, CFR.

The practice under the revised PCT regulations will permit an applicant to

provide, in addition to at least one specified designation, a precautionary designation of all other PCT member countries and regions so that any intended designation which may have been overlooked on filing can be corrected within 15 months of the priority date by confirmation of the designation. Applicants are cautioned, however, that in order for the confirmation of a designation of the U.S. to be valid, the inventor must have been named in the application papers as filed, 37 CFR 1.421(b).

International applications are searched and published prior to the 20-month deadline for entry into the national stage. If a demand for preliminary examination is filed before expiration of 19 months from the priority date, the time for entry into the national stage is extended to 30 months from the priority date and the international application will be subject to preliminary examination under chapter II of the PCT. The practice under the revised PCT regulations permits an applicant to indicate in the demand that preliminary examination is to be based on an accompanying PCT article 34 amendment and, if the amendment is not received with the demand, the applicant will be notified and given a time period within which to file the missing amendment. This new procedure will ensure that examination will go forward based on the desired PCT Article 34 amendment.

Also, the Office is aware that certain applicants have had difficulty in properly filing national stage applications due to the different requirements in the rules for PCT and U.S. national applications. Some differences cannot be avoided due to different procedures required under the PCT from U.S. national practice. It is desirable, however, to minimize these differences and to simplify national stage filing procedures.

International applications have become abandoned for failure to timely provide an oath or declaration, a filing fee and/or an accurate translation. In national practice under 35 U.S.C. 111, if any of these items was not presented at the time of filing, a notice would be mailed to the applicant setting a period of time to provide the missing item(s) and to pay a fee. The amendments to the rules governing entering the national stage will establish a greater degree of uniformity of practice and requirements for filing an application under 35 U.S.C. 111 and entering the national stage in an international application under 35 U.S.C. 371.

Amending § 1.494 and 1.495 results in regulations much like the present § 1.53. The major exception is that a notification of any missing parts in § 1.494 and 1.495 will only be mailed in those instances where the applicant has paid the basic national fee within 20 or 30 months from the priority date depending on whether election of the U.S. under chapter II of the PCT has been made prior to 19 months. Applicants can no longer pay the basic national fee with a surcharge after the 20/30 months deadline. Failure to pay the basic national fee within 20/30 months from the priority date will result in abandonment of the application. Paying the fee gives a clear indication to the Office that the applicant desires to enter the national stage. If the required oath, declaration or translation has not been filed within 20/30 months from the priority date, as appropriate, the Office will send applicant a notice and provide a period of time to supply the deficiency. Upon paying the basic national fee within 20/30 months from the priority date, the applicant will have the opportunity to inform the Office of a U.S. correspondence address, if any. Thus, the Office will avoid unnecessary handling of approximately 40% of those applications that designate the U.S. but do not enter the national stage, and will be able to send a notice to a U.S. correspondence address in most cases.

Often at 20 or 30 months from the priority date, the only communication which has been received by the Office is a copy of the international application from the International Bureau with the address of the foreign attorney or agent who represented the applicant in the international stage. The foreign attorney or agent may not be conversant in English or knowledgeable about U.S. practice, factors which often contribute to complicating the processing of applications. Thus, the new practice, which requires payment of the basic national fee on or before 20 or 30 months from the priority date, has several advantages: (1) It will enable the applicant to identify the U.S. attorney or agent for correspondence from the Office; (2) the Office, after a check of the national stage papers at 20 or 30 months, will mail a notice identifying any deficiencies and affording applicant a period for correction of those deficiencies; and (3) as in national practice under § 1.53, it will enable applicants to extend the period of time under § 1.136 for submission of a proper oath, declaration or translation.

The changes to §§ 1.494 and 1.495 address the problems which have been most frequently encountered in entering the national stage in the United States. The new practice of notifying applicants of the omission of a proper oath, declaration or translation and setting an extendable period of time for correction will allow applicants greater flexibility in the time for submission of these documents, thus avoiding the consequence of abandonment and potential loss of rights in the United States.

Implementation

The rule changes which reflect corresponding amendments in the PCT regulations were implemented on 01 July 1992 when the amendments became effective. The remaining rule changes will be effective on 01 May 1993. Setting a date for the rules to take effect several months in the future will allow time for applicants to change their procedures to conform to these rules.

Those international applications entering the national stage under § 1.494 where 20 months from the priority date expires on, or before, 30 April 1993 are under the old rule (§ 1.494 effective 01 July 1987) and those international applications entering the national stage under § 1.495 where 30 months from the priority date expires on, or before, 30 April 1993 are under the old rule (§ 1.495 effective 01 July 1987). Those international applications entering the national stage under section 1.494 where 20 months from the priority date expires on, or after, 01 May 1993 are under the new rule (§ 1.494 effective 01 May 1993) and those international applications entering the national stage under § 1.495 where 30 months from the priority date expires on, or after, 01 May 1993 are under the new rule (§ 1.495 effective 01 May 1993). For example:

(1) If a copy of an international application (which designates the U.S.) that has a priority date of 30 August 1991 is filed in the Office by 30 April 1993 (within 20 months from the priority date), applicant may enter the national stage under 37 CFR 1.494 by submitting any required English translation, the basic national fee and the oath or declaration not later than 30 June 1993. Of course, the payment of the surcharge and processing fee (37 CFR 1.492(e) and (f)) would also be due.

(2) If a copy of an international application (which elected the U.S. before expiration of 19 months from the priority date) that has a priority date of 30 October 1990 is filed in the Office by 30 April 1993 (within 30 months from the priority date), applicant may enter the national stage by submitting any required English translation, the basic national fee and the oath or declaration not later than 30 June 1993. Of course, the payment of the surcharge and processing fee (37 CFR 1.492(e) and (f)) would also be due.

(3) If a copy of an international application (which designates the U.S.) that has a priority date of 01 September 1991 is filed in the Office by 03 May 1993 (within 20 months from the priority date—01–02 May 1993 being a Saturday and Sunday, respectively), then applicant must pay the basic national fee by 03 May 1993 to avoid abandonment of the application. If the basic national fee is timely paid, a notice will then be sent to applicant giving a time period within which to file the oath or declaration and any required translation (new § 1.494(c)).

(4) Any international application having a priority date of 01 September 1991, or later, is under the new rule. Thus, if applicant files papers for the national stage indicated to be under the procedure of the old rule (§ 1.494) in the Office before 01 May 1993 (i.e., before expiration of 20 months from the priority date) but omits the basic national fee, the application will, nonetheless, become abandoned at midnight on 03 May 1993 (after 20 months from the priority date—01–02 May 1993 being a Saturday and Sunday, respectively) because applications where the 20-month deadline expires on or after 01 May 1993 come under the new practice. In accordance with new § 1.494 (i) a copy of the international application must be furnished to the Office, and (ii) the basic national fee must be paid before expiration of 20 months from the priority date.

Response to Comments on the Rules

Eight written comments were received in response to the notice of proposed rulemaking. All of the comments were considered in adopting the changes set forth herein. The comments and responses to the comments follow.

Comment 1. One comment stated that "The proposed addition to § 1.431(b)(1) of 'and the papers filed at the time of receipt of the international application [so] indicate' goes beyond the requirements set forth in the PCT and is contrary to PCT Administrative Instructions, section 329." Two other similar comments were received and urged, in effect, that § 1.431(b)(1) be revised to adopt the procedure set forth in section 329 of the PCT Administrative Instructions.

Response: The suggestion has not been adopted. The provisions adopted in § 1.431(b)(1) are consistent with, and required by, article 11 of the PCT as interpreted by the Office. Section 329 of the PCT Administrative Instructions was issued by the International Bureau after the Bureau was advised that the Office believed new section 329 to be inconsistent with requirements of Article 11 of the Treaty and inconsistent with over 13 years of practice in the United States. In the opinion of the Office, PCT Administrative Instruction 329 is inconsistent with PCT Article 11 and Rule 20.4(a), which require the Office to promptly determine whether the applicant does not obviously lack, by reasons of residence or nationality, the right to file an international application. In accordance with PCT Rule 89.1(b), "The Administrative Instructions shall not be in conflict with the provisions of the Treaty, these regulations, * * *." The United States will not follow Administrative Instruction 329.

Comment 2. One comment stated that in § 1.431(c), the reference to "PCT Rule 15.2" should be to "PCT Rule 15" because PCT Rule 15.1 is also relevant, and the reference to "§ 1.445" should be changed to refer to "PCT Rules 14 and 16.1 because § 1.445 does not cover the European Patent Office (EPO) search fee which is also paid to the USPTO."

Response: The suggestion has not been adopted. The references to Rule 15.2 and § 1.445 are considered proper in the context in which they are used. The references to Rule 15.2 and § 1.445 are not new and have worked well in directing applicants regarding international application requirements. The EPO search fee is not mentioned in § 1.431, but is published in each issue of the Official Gazette for applicant's information.

Comment 3. One comment stated that in § 1.431(d), the words "one designation fee' should be deleted since this is covered by § 1.432(b) and that "timely made" in line 5 be changed to "paid within the one-month period" for clarity.

Response: The first suggestion in the comment is not adopted. The reference to "one designation fee" in § 1.431(d) is repeated in § 1.432(b) to add clarity on this important point. The second suggestion in the comment is not adopted since it would introduce error into § 1.431(d). Indeed, all the fees must be paid timely, and need not be paid within the one-month period set pursuant to § 1.431(c), e.g., some fee(s) may be paid prior to the one-month period. Presumably the one-month period mentioned in the comment refers to a period set pursuant to § 1.431(c) which may not need to be set in every case.

Comment 4. One comment indicated that (in the fourth paragraph of the Supplementary Information section) the discussion of new § 1.432 includes a reference to a "generic" designation of all countries which, instead, should refer to a precautionary designation of all countries except the required specified designation(s).

Response: The appropriate change has been made to the discussion of § 1.432 to clarify that an applicant may provide, in addition to at least one specified designation, a precautionary designation of all other PCT member countries and regions so that any intended designation which may have been overlooked on filing can be corrected within 15 months of the priority date.

Comment 5. One comment stated that in § 1.432(a) and (b) the word "request" should be capitalized in view of § 1.401(d). A corresponding comment was made with respect to § 1.451(a).

Response: This suggestion is adopted since PCT Rule 4.10 requires the designations to appear on the Request (form RO/101) and § 1.432 continues to require that the designation(s) be indicated in the Request on filing. Similarly, with respect to § 1.451(a), the suggestion is adopted.

Comment 6. One comment stated that in § 1.432(a) "or regions" should be changed to "for the purpose of obtaining national or regional patents".

Response: The suggestion is adopted to the extent that § 1.432(a) has been changed by replacing "or regions" with "including an indication that applicant wishes to obtain a regional patent, where applicable." The adopted wording is preferable since it is the same as the wording of PCT Rule 4.9(a)(ii).

Comment 7. One comment objected to the requirement contained in § 1.432(a) that designations in the international application shall be stated as provided in PCT Rule 4.9(a) and section 115 of the Administrative Instructions Under the PCT. Also, the comment urged that the PCT Administrative Instructions should be reproduced in §§ 1.432 and 1.451 so that applicants have access to them.

Response: Section 115 of the PCT Administrative Instructions makes reference to the names and abbreviations of all countries. Inclusion of such a long list would unnecessarily encumber § 1.432(a). The Administrative Instructions are readily available, and a list of countries is provided in the Manual of Patent Examining Procedure (chapter 200). Applicants using a current Request form will inherently comply with PCT Rule 4.9(a) and sections 110 and 115 of the PCT Administrative Instructions.

Comment 8. One comment asked "If an applicant does not pay the fee(s) set out in § 1.432(c)(2) or (3), will he/she be given an additional month to pay the fees described in § 1.432(b)(1) and (2)?"

Response: No extension of time is available to the 15-month deadline of § 1.432(c). The time period set under § 1.432(b) does not apply to section § 1.432(c). If payment for the designations to be confirmed under § 1.432(c) is not received by 15 months from the priority date, those precautionary designations are considered to be withdrawn, PCT Rule 4.9(b).

Comment 9. One comment suggested adding references to PCT Rule 4.9(a) and (b) in various locations in § 1.432.

Response: The suggestion is adopted by adding appropriate references to PCT Rule 4.9(a) and (b).

Comment 10. One comment suggested that the last sentence in § 1.432(b) be moved to become the second sentence of § 1.432(b) and the third sentence be moved to become the last sentence of § 1.432(b).

Response: These suggestions are not adopted since they would not constitute an improvement to § 1.432(b).

Comment 11. One comment suggested that, in § 1.432(c)(3) unconfirmed designations indicated to be "considered withdrawn" should be changed to "regarded as withdrawn by the applicant".

Response: This suggestion has not been adopted because it does not further clarify § 1.432(c)(3). Unconfirmed designations are considered to be withdrawn by the applicant under PCT Rule 4.9(b)(ii) and are also considered to be withdrawn by the Office.

Comment 12. One comment suggested that § 1.446(d) should be expanded to indicate that a refund of the search fee will be given even after the search copy has been transmitted just so long as the withdrawal is effective before start of the international search.

Response: This suggestion has not been adopted since refunds may or may not be appropriate in the noted instance. For example, if the EPO acting as an international searching authority begins the search after withdrawal but before receipt of the withdrawal from the U.S. receiving office, a refund may not be made.

Comment 13. On comment suggested that in § 1.446(e) "demand" should be capitalized in view of § 1.401(g).

Response: This suggestion is adopted.

Comment 14. One comment suggested that the reference in § 1.451(a) to section "201" of the Administrative Instructions should be changed to "115"

Response: This suggestion is adopted since section "201" of the Administrative Instructions has been changed effective July 1, 1992, and is now section "115".

Comment 15. One comment noted that the proposed change in § 1.455(a) does not reflect that a common representative need not be "appointed".

Response: A new sentence has been inserted into § 1.455(a) to address the situation where no common representative or agent has been appointed. Where no common representative or agent has been appointed, the first mentioned applicant who is entitled to file in the U.S. receiving office is considered to be the common representative, PCT Rules 2.2bis and 90.2(b).

Comment 16. One comment noted that the proposed change in § 1.455(a) does not reflect that if a new common representative is appointed, the previous common representative is automatically revoked.

Response: The last sentence of § 1.455(a) has been changed to reflect that the later appointment of an attorney, agent or common representative revokes any earlier appointment unless otherwise indicated.

Comment 17. One comment suggested that "In §§ 1.475(a), 1.488(a) and 1.499(e) reference should be added to PCT Rule 13, Administrative Instructions, section 206, and possibly to Annex B of the Administrative Instructions."

Response: The suggestion is not adopted because it gives no reasons for the proposed change and it is not evident that the change is needed.

Comment 18. One comment stated that in the Supplementary Information discussion of § 1.475(b), the explanation of "specially adapted" was different from the explanation in Annex B, part I of the Administrative Instructions.

Response: The discussion of § 1.475(b) has been revised to conform to Annex B, Part I of the Administrative Instructions.

Comment 19. One comment stated that in § 1.484(b) no need is seen for adding the last two sentences because "The provision relates only to International Searching Authority practice and is set forth in more detail by the PCT Rules."

Response: Section 1.484(b) is directed to conduct of the International Preliminary Examining Authority rather than the International Searching Authority. The explanation in § 1.484(b) is retained because, although it parallels PCT Rule 69.1(e), it informs applicants that delay in submission of an amendment will delay the start of examination. Applicants should be aware that, since the time for issuance of the final report is fixed by PCT Rule 69.2 and may not change, any delay in the start of examination may work to applicants' disadvantage. For example, the minimum time may have to be set for response to any opinions, there may be time for only one opinion and/or there may be less time for interviews.

Comment 20. On comment suggested that § 1.485 should be amended to take into account that amendments are permitted under PCT Rule 66.4bis even after the time period set by the International Preliminary Examining Authority.

Response: This suggestion is not adopted. Section 1.485 sets forth when an amendment may be filed so that it will be considered. Amendments filed at other times may not be considered.

Comment 21. One comment suggested that the beginning of section 1.492 should be changed to reflect that, in view of H.R. 3531, the national stage fees are under 35 U.S.C. 41(a) rather than under 35 U.S.C. 376.

Response: H.R. 3531 was enacted into law (Public Law 102–204). Accordingly, the suggestion in the comment has been adopted by revising the introductory language in § 1.492 to remove the reference to 35 U.S.C. 376.

Comment 22. One comment urged that in the Discussion of Specific Rules for §§ 1.494(b) and 1.495(b), the discussion should be modified to clarify that the applicant need only check "his or her" files to be sure that the Bureau's notice regarding transmittal of a copy of the international application has been received.

Response: The language has been revised to eliminate any ambiguity.

Comment 23. One comment suggested that "as filed" in § 1.494(c) should be set off by commas as in § 1.495(c).

Response: Section 1.494(c) has been changed as suggested.

Comment 24. One comment questioned the phrases "accurate translation" and "proper translation" as used in the Supplementary Information discussion and stated that these phrases do not further explain the word "translation" as used in the statute. Another comment suggested that the rule should provide for correction of errors in the translation without penalty of abandonment or surcharge.

Response: The statute (35 U.S.C. 371(c)(2)) requires that applicant file a translation of the international application to avoid abandonment (35 U.S.C. 371(d)). The Office has received purported translations which include amendments to the text of the international application and other inconsistencies with the text of the non-English language document. It is helpful to explain that a translation must be accurate and a proper translation. The

Office does not inspect a purported translation for all errors, it only inspects for errors which are apparent on the face of the document. For example, where the non-English language international application has 6 claims and the purported translation has 8 claims, obviously the requirement for a proper translation has not been met. Submission of inaccurate translations require additional processing by the Office, thus the requirement for a processing fee is appropriate.

Comment 25. One comment stated that in the Supplementary Information discussion of §§ 1.494 and 1.495 the reference to the U.S. correspondence address should be modified to add "if any" since none is required.

Response: The suggestion has been adopted.

Comment 26. One comment stated that in the preamble of § 1.495(e) there appears to be a contradiction in that the first sentence suggests a translation of the annex may be filed within the time period set under 1.495(c) whereas the second sentence suggests the translation of the annex must be filed by 30 months or "be considered cancelled."

Response: The sentences are compatible. The first sentence applies to the case where the translation, oath or declaration have not been submitted by 30 months. In such case, they (and any annex) may be submitted within the time period of paragraph (c). The second sentence applies to the case where the translation and oath or declaration have been submitted by 30 months, whereupon no additional time is set under paragraph (c). Thus, in the first instance, if applicants are given additional time to submit the translation or oath or declaration, they may also submit the annex in that same additional time. But where the translation and oath or declaration have been submitted by 30 months, an additional time period will not be provided simply for submitting a translation of the annex. Of course, applicant may submit a preliminary amendment under 37 CFR 1.121 including the subject matter of the annex.

Comment 27. One comment suggested that §§ 1.494(b)(3) and 1.495(b)(3) should be amended to permit an extension of time for the basic national fee so that it may be submitted, like the declaration and translation, after 20 and 30 months.

Response: The suggestion is not adopted. Submission of the basic national fee gives the Office a clear indication that applicant intends to enter the national stage. This helps the Office to avoid processing of those 40% of the international applications which designate the U.S. but do not enter the national stage. Also, filing of the basic national fee by 20 or 30 months will ordinarily provide the Office with the correspondence address of the person prosecuting the national stage application. Without this correspondence address, the Office would send any notice of missing parts to the correspondence address in the international application (e.g., the person who prosecuted the international stage and who may not be qualified to prosecute the U.S. national stage). The rules as amended address the greatest hurdle for entry into the national stage which has been submission of the oath or declaration by the 22 or 32-month deadline.

Comment 28. One comment suggested that §§ 1.494(d) and 1.495(d) should indicate that the PCT Article 19 amendments (which have not been received) are not only considered to be cancelled, but are also "disregarded under PCT Rule 49.5(c-bis)."

Response: The suggestion is not adopted because this additional reference to PCT Rule 49.5(c-bis) is not helpful. The indication that the PCT Article 19 amendments are cancelled is in accordance with 35 U.S.C. 371(d). It is standard practice in the examination of a patent application in the United States to disregard amendments that have been cancelled.

Comment 29. One comment suggested that, with respect to § 1.494, "The proposed rules do not make clear the relationship between paragraphs (c) and (g) as to the time period set for later furnishing of the translation into English."

Response: Paragraph (c) provides that applicant will be provided a period of time to file the translation (if the requirements of paragraph (b) have been met) and paragraph (g) provides that the application becomes abandoned if any required translation is not filed within the time period set in paragraph (c). Thus, where the other requirements have been met but the translation has not been provided, paragraph (c) provides a time period for submission of the translation and paragraph (g) provides the sanction (abandonment) for failing to comply within the set period.

Comment 30. One comment questioned whether the time period for translation of any PCT Article 19 amendments should be extendable with any extension for translation of the international application. A corresponding comment was made with respect to § 1.495.

Response: An extension of time for submission of the translation of any PCT Article 19 amendment is not possible in view of the provisions of 35 U.S.C. 371(d).

Comment 31. One comment suggested that §§ 1.494(g) and 1.495(h) should be modified by replacing "the translation" with "any required translation."

Response: The suggestion is adopted. Translations are not required where the international application was filed in English.

Comment 32. One comment suggested that at the beginning of § 1.495(c) after "paragraph (b)" the word "of" should be added.

Response: The suggestion is adopted.

Comment 33. One comment suggested that § 1.495(d) could be deleted since under PCT Rules 70.16 and 74.1 relevant amendments under PCT Article 19 must be annexed to the international preliminary examining report and therefore must be translated under § 1.495(e). It was further noted that superseded PCT Article 19 amendments need not be translated.

Response: The suggestion is not adopted. Section 1.495(d) covers the situation where the PCT Article 19 amendment is not annexed. For example, where applicant enters the national stage in the U.S. and withdraws the international application before issuance of the final report. In this instance, translation of the PCT Article 19 amendments would have to be submitted by the date of commencement of the national stage (which cannot be later than 30 months) or be considered cancelled.

Comment 34. One comment observed that under § 1.495(e) if there is no time period to be set for submission of the translation of the international application and/or the oath or declaration, there is no possibility for extra time (after the 30-month deadline) for submission of a translation of the annex. It was suggested that section 1.495(e) be reworded to permit extra time (after the 30-month deadline) for submission of a translation of the annex even where the translation of the international application and/or oath or declaration had been submitted by 30 months.

Response: The suggestion is not adopted. Where the translation of the international application and/or the oath or declaration have been submitted by 30 months, it is appropriate to promptly forward the application for examination rather than delay examination for a translation of the annex (especially since often it appears that applicant does not wish to proceed on the basis of the annex). Some applicants prefer to submit preliminary amendments under § 1.121 (which may

be done even after 30 months) rather than to submit a translation of the annex.

Comment 35. One comment urged that § 1.495(e) is inconsistent in that it states that the 30-month time limit may not be extended, and then states that if the translation of the international application is not filed within 30 months from the priority date additional time may be set under paragraph (c) of this section.

Response: The two statements are not contradictory. The time period for submission of the translation and oath or declaration is a new time period and is not an extension of the 30-month time limit. The fixed time limit for submission of the basic national fee is 30 months for the priority date. If the basic national fee is not paid by this 30-month deadline, the application is abandoned. If, on the other hand, the basic national fee is paid by 30 months from the priority date, the pendency of the international application continues past 30 months. If the translation or oath or declaration have not been filed by the 30-month deadline (but the basic national fee has been paid), the application is not abandoned and a time period is set for submission of the missing translation and oath or declaration.

Comment 36. One comment asked "Is it the intention of the Patent and Trademark Office to affect, in any way, the current practice of assigning a date on which the section 371(c)(4) requirement (oath or declaration) will be deemed to have been met, if an applicant submits an oath or declaration in response to a Notice of Missing Parts, thereby ultimately affecting the section 102(e) date to which the eventually granted U.S. patent will be entitled?"

Response: Nothing in the new rule will affect the 35 U.S.C. 102(e) date which will continue to be the date that the last of the 35 U.S.C. 371(c) (1), (2) and (4) requirements are fulfilled.

Comment 37. One comment suggested that section 1.821 be clarified to reflect that the notice requiring compliance with paragraphs (b) through (f) is sent by the international searching authority.

Response: The suggestion is not adopted. Section 1.821 does not specify who will send the notice and there is no need to do so in the rule.

Comment 38. One comment questioned as to section 10.9 whether a pro se applicant from Brazil, who is either an individual or a company, would have the right to practice before the U.S. as an international searching or international preliminary examining authority.

Response: Section 10.9 has been amended to clarify that it is not directed to pro se applicants.

Discussion of Specific Rules

The following is a table correlating PCT Rule changes with the new 37 CFR changes. Sections 1.431(b)(1), 1.431(b)(3)(ii), 1.451(a), 1.482(a)(2)(i), 1.492(e), 1.494 and 1.495, which are also amended, are not shown in the table because they are changes that are not required by PCT Rule changes.

RULE CORRELATION TABLE

37 CFR change	PCT rule change
1.431(c)–(e)	16bis, 27.1.
1.432(a)	4.1(b)(iv), 4.9.
1.432(b)	5.5, 16bis.
1.432(c)	15.5
1.434(a)	3.1.
1.445(a)(4)	15.5.
1.446(d)	15.6, 16.2.
1.446(e)	57.6
1.455(a)	90, 2.2bis.
1.475	13.
1.476(a)	13.
1.480(b)	53.1.
1.482(b)	57.5.
1.484(b)	60.1(g), 66, 69.1.
1.485	60.1(g).
1.487	13.
1.488(a)	13.
1.499	13.
1.821(h)	13ter.1(c).
10.9(c)	90.

Section 1.431(b)(1) is amended to clarify that an international filing date will be accorded to an International application filed in the United States where at least one applicant is indicated to be a resident or national of the United States in the papers as filed. If the papers, as filed, indicate a residence or nationality for at least one applicant, the United States Receiving Office can promptly determine whether, as required by PCT Article 11, "the applicant does not obviously lack" the requisite residence or nationality to file an international application in the United States Patent and Trademark Office.

Section 1.431(b)(3)(ii) is amended to add a cross-reference to § 1.432 which sets forth the requirements regarding designations.

Section 1.431(c) is amended to reflect that the United States Receiving Office, rather than the International Bureau, will be responsible for collecting fees not paid in full at the time of filing the international application or within one month thereafter. The change reflects the procedural change under the new PCT Regulations that the Receiving Office, rather than the International Bureau, will be responsible for communicating deficiency notices to the applicant and collecting the necessary fees. Under the procedure in paragraph (c), a notice of any fee deficiency will be mailed by the Receiving Office setting a time period of one month for payment of the fee deficiency and a late payment fee equal to the greater of (1) 50% of the amount of the deficient fees up to a maximum amount equal to the basic fee, or (2) an amount equal to the transmittal fee. The time period of one month for response to this notice cannot be extended.

Section 1.431(d) is eliminated as unnecessary since the United States Receiving Office will take over the responsibility for collecting fees in place of the International Bureau.

Section 1.431(e) is redesignated as 1.431(d) and clarifies that the failure to timely pay the fees pursuant to paragraph (c) will result in the withdrawal of the international application.

Section 1.432(a) is amended to clarify that the applicant must specify, on filing, at least one national or regional designation in order to be granted a filing date for the international application. This specific designation is required whether or not all designations are indicated pursuant to paragraph (c) of this section. The reference to section 201 of the Administrative Instructions has been changed to section 115 to correspond to the change in the Administrative Instructions.

Section 1.432(b) is amended to establish a procedure for the late payment of fees for designations that were specified on filing an international application, and a procedure, pursuant to PCT Rule 16bis.1(c), in accordance with section 321 of the PCT Administrative Instructions for allocating fees, where the amount paid is insufficient to cover all the fees. The payment of the designation fees with a late payment fee (previously termed a "surcharge") is not new. Under the revised PCT regulations, however, the Receiving Office, rather than the International Bureau, will be responsible for communicating deficiency notices to the applicant. The designation fees may be paid, without necessity for a late payment fee, within one year from the priority date or within one month from the date of receipt of the international application if that month expires after the expiration of one year from the priority date. The applicant will be notified and given one month within which to pay any deficient designation fees plus a late payment fee. The amount of the late payment fee is equal to 50% of the deficient fees, but will not be less than the amount of the transmittal fee (currently $200) and will not exceed the amount of the basic fee (currently $525).

The one-month time limit for payment of the deficient designation fees and late payment fee may not be extended. If, after expiration of the one-month time period, at least one designation fee has not been paid (with any late payment fee which is due), the international application will be withdrawn. If, after expiration of the one-month time period, at least one designation fee has been paid (with any late payment fee which is due) but the amount paid is not sufficient to cover the late payment fee and all the designation fees, the amount paid will be allocated, pursuant to PCT Rule 16bis.1(c), in accordance with section 321 of the Administrative Instructions. Section 321 of the Administrative Instructions provides that the amount will be allocated in accordance with any instructions received from the applicant or, if no instructions have been received, in the order in which the designations appear in the request part of the international application. Designations for which no designation fee is timely filed will be withdrawn. In § 1.432(b), the reference to parenthetical numbers (1) and (2) used to describe the late payment fee as proposed has been deleted in the final rule to improve clarity.

New § 1.432(c) establishes a procedure wherein, in addition to the designation(s) under paragraph (a), the applicant could indicate, on filing, all designations permitted under the Treaty and confirm desired designations of countries or regions up to 15 months from the priority date. Section 1.432(c) as promulgated requires that applicant's indication of all designations permitted under the Treaty in addition to the designation(s) under paragraph (a) be made in the Request in accordance with PCT Rule 4.9(b). The confirmation must include both a written notice of the countries or regions being confirmed, the appropriate designation fees and a confirmation fee based on the number of countries or regions being confirmed. If the amount of the fees is insufficient, the Receiving Office will allocate the amount paid in accordance with any priority of designations specified by the applicant or, if no priority is specified, in accordance with section 321 of the Administrative Instructions. A notice reminding applicant of the 15-month deadline will not be provided. Unconfirmed designations will be considered withdrawn.

Section 1.434 is amended to allow applicants to develop their own computer-generated Request form so long as the forms comply with the requirements of sections 102 (h) and (i) of the Administrative Instructions. Printed Request forms will continue to be available from the United States Patent and Trademark Office.

New § 1.445(a)(4) defines the amount of the confirmation fee required for the designations confirmed under § 1.432(c). The confirmation fee is equal to 50% of the sum of the designation fees for the designations being confirmed. For example, a confirmation of four additional designations (at $127 per designation, or $508) would require a $254 confirmation fee. The total amount of the fees due would be $762, which is the sum of $508 and $254.

Section 1.446(d) is amended to clarify that the international (basic and designation, PCT Rule 15.1) and search fees may be refunded under certain circumstances linked to whether the record copy or search copy has been transmitted to the International Bureau or International Searching Authority, respectively. The transmittal fee and any late payment fees will not be refunded, but will be retained to cover Office processing costs. If the record copy or search copy has been transmitted, the Receiving Office cannot refund or authorize the refund of the international or search fees. Any request for a refund filed after the record copy or search copy has been transmitted should be directed to the International Bureau (for the international fee) or the International Searching Authority (for the international search fee) for consideration of whether a refund should be made.

New § 1.446(e) indicates that a refund of the handling fee by the International Preliminary Examining Authority is permitted only in the situations where the demand is considered not to have been submitted or upon withdrawal of the demand before the demand has been sent to the International Bureau. If the demand has been sent to the International Bureau, requests for refund of the handling fee should be directed to the International Bureau.

Section 1.451(a) is amended to clarify that the applicant must specify, on filing, the priority of a previously filed application in order to be granted priority in the international application. The right to priority is not necessarily lost if the claim is not on the Request form, but will be lost if the claim does not appear in the papers presented on filing of the application.

Section 1.455(a) is amended to clarify that the term "common representative" means an applicant appointed by the other applicants or considered to be the representative of the other applicants. Further, since attorneys and agents are registered to practice before the Office rather than licensed, § 1.455(a) has been amended by replacing the word "licensed" with "registered." The paragraph also clarifies who can represent applicants in an international application before the U.S. International Searching Authority or the U.S. International Preliminary Examining Authority, e.g., (1) An attorney or agent registered to practice before the Office, and (2) an attorney or agent not registered to practice before the Office, but authorized to practice before the national office with which the international application was filed and for which the United States is an International Searching Authority or International Preliminary Examining Authority. In the latter case, representation is restricted to practicing before the U.S. International Searching Authority and/or the U.S. International Preliminary Examining Authority. For example, if an international application is filed in the Brazilian Patent Office, an agent authorized to practice before the Brazilian Patent Office may prosecute that application before the U.S. International Searching Authority or the U.S. International Preliminary Examining Authority. Paragraph (a) also provides that, unless otherwise indicated, the appointment of an attorney, agent or common representative revokes any earlier appointment as specified in PCT Rule 90.6(b).

Section 1.475 is amended to adopt the unity of invention principles of PCT Rule 13, as amended. Section 1.475 is further amended to reflect that the same unity of invention principles are applied by the international searching and preliminary examining authorities and during the national stage. Duplicative provisions in §§ 1.487 and 1.499 are deleted.

The principles of unity of invention are used to determine the types of claimed subject matter and the combinations of claims to different categories of invention that are permitted to be included in a single international or national stage patent application. The basis principle is that an application should relate to only one invention or, if there is more than one invention, that applicant would have a right to include in a single application only those inventions which are so linked as to form a single general inventive concept.

Section 1.475(a) is amended to contain both the definition of the requirement for unity of invention, and the unity of invention criteria that must be satisfied, where a group of inventions is claimed, in order to have a right to include multiple inventions in a single application. A group of inventions is linked to form a single general inventive

concept where there is a technical relationship among the inventions that involves at least one common or corresponding special technical feature. The expression "special technical features" is defined as meaning those technical features that define the contribution which each claimed invention, considered as a whole, makes over the prior art. For example, a compound is the common technical feature in an application claiming: (1) The compound per se, (2) a method of making the compound and (3) a method of using the compound. A corresponding technical feature is exemplified by a key defined by certain claimed structural characteristics which correspond to the claimed features of a lock to be used with the claimed key.

Section 1.475(b) is amended to define several combinations of different categories of claims which always fulfill the unity of invention requirements of § 1.475(a) where the same or corresponding special technical feature is claimed. There may be other combinations of different categories of claims which fulfill the requirement for unity of invention, but the determination of unity must be made under § 1.475(a), not § 1.475(b).

In § 1.475(b), a process is "specially adopted" for the manufacture of a product if the claimed process inherently produces the claimed product with the technical relationship defined in § 1.475(a) being present between the claimed process and the claimed product. The expression "specially adapted" as used in this section does not imply that the product could not also be manufactured by a different process.

In § 1.475(b), an apparatus or means is "specifically designed" for carrying out the process when the apparatus or means is suitable for carrying out the process with the technical relationship defined in § 1.475(a) being present between the claimed apparatus or means and the claimed process. The expression "specifically designed" does not imply that the apparatus or means could not be used for carrying out another process, not does it imply that the process could not be carried out using an alternative apparatus or means.

Section 1.475(c) is amended to require that unity of invention might not be present if a combination of categories of invention different from those described in § 1.475(b) are presented in an application. The requirements of § 1.475(a) are always met by the combinations described in § 1.475(b) where the same or corresponding special technical feature is claimed. All other combination must be tested against the unity of invention standard of § 1.475(a).

Section 1.475(d) is amended by deleting reference to the different combinations of categories of invention that always meet the unity of invention standard (now set forth in § 1.475(b)), and to make reference to the determination of the main invention where multiple products, processes of manufacture or uses are claimed. The significance of determining the main invention is set forth in § 1.476(c).

Section 1.475(e) is amended to require that the determination regarding unity of invention be made without regard to whether a group of inventions is claimed in separate claims or as alternatives within a single claim. The basic criteria for unity of invention are the same, regardless of the manner in which applicant chooses to draft a claim or claims.

Section 1.475(f) is deleted since PCT Rule 13 has been amended and the basic principles of unity of invention are incorporated into other portions of § 1.475.

Section 1.476(a) is amended to delete the reference to § 1.475(f) (which is deleted) and PCT Rule 13.

Section 1.480(b) is amended to allow applicants to develop their own computer-generated Demand form so long as the limitations in sections 102 (h) and (i) of the Administrative Instructions are met. Printed Demand forms will continue to be available from the Office.

Section 1.482(a)(2)(i) is amended to clarify that an additional preliminary examination fee may be charged for lack of unity in Chapter II irrespective of whether there was a similar charge in Chapter I. Normally there will be a charge for lack of unity both in Chapter I and in Chapter II. In some instances, although a charge for the search of an additional invention is justified in Chapter I, the examiner chooses to proceed without charging for the search of the additional invention(s). However, circumstances may change (e.g., an amendment submitted with the Demand expanding the claims to the additional invention(s)) in Chapter II so as to warrant the examiner's requirement for an additional fee for examination of examiner's requirement for an additional fee for examination of the additional invention(s).

Section 1.482(b) is amended to remove the reference to the supplement to the handling fee which had been collected for the benefit of the International Bureau and which has been deleted from the PCT regulations. At present, applicants must pay as many supplements to the handling fee as there are languages into which the elected Offices require translations of the international preliminary examination report. Under the new PCT regulations, all countries will accept an English translation of the international preliminary examination report, thus limiting the International Bureau's translation costs. Accordingly, only one handling fee will need to be paid by the applicant, without any supplement, irrespective of the need for a translation of the report.

Section 1.484(b) is amended to permit an applicant to indicate in the demand that international preliminary examination is to begin based on the application as amended rather than on the application as filed. If a PCT Article 19 amendment is not received by the Office by 20 months from the priority date, preliminary examination will proceed. Where the demand indicates examination is to be based on an accompanying PCT Article 34 amendment, but the PCT Article 34 amendment has not been provided to the Office with the demand, the applicant will be notified and given a time period to submit the amendment. Thus, if the applicant wishes preliminary examination based on an amended version of the international application, the demand must so indicate and the amendment (PCT Article 19 or 34) must (1) accompany the demand; or (2) in the case of a PCT Article 19 amendment, be received by 20 months from the priority date; or (3) in the case of the PCT Article 34 amendment, be submitted within the nonextendable time period set by the Office.

Section 1.485 is amended to be consistent with § 1.484 and provides for amendments to be filed with the demand or within a time period set by the International Preliminary Examining Authority.

Section 1.487 is removed as unnecessary because the amendments to § 1.475 address the unity of invention principles to be applied by the International Preliminary Examining Authority.

Section 1.488(a) is amended to replace the reference to § 1.487, which is removed, with a reference to § 1.475.

Section 1.492 is amended to revise the introductory clause to eliminate the reference to 35 U.S.C. 376.

Section 1.492(e) is amended to eliminate the surcharge for filing the basic national fee after 20 or 30 months from the priority date. In accordance with the new practice under §§ 1.494 and 1.495, the basic national fee must be filed no later than 20 months, or 30 months if a timely election was filed,

from the priority date in order to avoid abandonment of the application.

Sections 1.494 and 1.495 is amended to modify the practice for entering the national stage as a designated or elected office by more closely aligning it with national application practice under § 1.53.

Section 1.494(a) is amended to clarify that absence of a Demand form is no longer the controlling event, but rather failure to elect the United States within 19 months of the priority date will trigger the time periods set forth in paragraphs (b) and (c) of this section.

Section 1.494(b) is amended to require that the basic national fee and a copy of the international application must be filed with the Office by 20 months from the priority date to avoid abandonment. The 22-month period for filing the basic national fee with a surcharge in previous rule 1.494(c) has been eliminated. The International Bureau normally provides the copy of the international application to the Office in accordance with PCT Article 20. At the same time, the International Bureau notifies the applicant of the communication to the Office. In accordance with PCT Rule 47.1, that notice shall be accepted by all designated offices as conclusive evidence that the communication has duly taken place. Thus, if the applicant desires to enter the national stage and applicant has received the notice from the International Bureau, applicant need only pay the basic national fee by 20 months from the priority date. The 20-month time limit for submission of the basic national fee and a copy of the international application is not extendable.

Section 1.494(c) is amended to provide that applicants who have provided the basic national fee and a copy of the international application by 20 months from the priority date but who omit a proper translation, oath or declaration will receive a notification setting a time period for submission of the omitted requirements. The time period set in the notice can be extended pursuant to § 1.136. Filing of the oath or declaration later than 20 months will require the payment of the surcharge set forth in § 1.492(e). Filing of the translation later than 20 months will require the payment of the processing fee set forth in § 1.492(f).

Section 1.494(d) is amended to clarify the existing practice that PCT Article 19 amendments must be submitted by 20 months from the priority date, which time may not be extended. Of course, the failure to do so does not result in loss of the subject matter of the PCT Article 19 amendments. The applicant may submit that subject matter in a preliminary amendment filed under § 1.121. In many cases, filing an amendment under § 1.121 is preferable since grammatical or idiomatic errors may be corrected.

Section 1.494(g) is removed in view of the amendments to sections (b), (c) and (d).

Section 1.494(h) is redesignated as 1.494(g) and is amended to specify when an application that fails to enter the national stage becomes abandoned. Abandonment occurs at 20 months from the priority date if the basic national fee and a copy of the international application have not been provided to the Office. If they have been provided to the Office within 20 months and the translation and/or oath or declaration are not filed timely, abandonment occurs upon expiration of the time limit set in the notification pursuant to paragraph (c). Thus, in the latter situation, abandonment would occur at the expiration of the time period set in the notice to file the missing translation, and/or oath or declaration. The phrase "where the United States has been designated but not elected *prior to* 19 months from the priority date" (emphasis added) has been changed to "where the United States has been designated but not elected *by the expiration of* 19 months from the priority date" (emphasis added) for clarity. A corresponding change has been made in § 1.495(h).

Section 1.495(a) is amended to clarify that the election of the U.S. need not be made in the Demand, but can be made subsequently if filed before expiration of 19 months from the priority date to start the time periods set forth in paragraphs (b) and (c) of this section.

Section 1.495(b) is amended to require that the basic national fee and a copy of the international application must be filed with the Office by 30 months from the priority date to avoid abandonment. The 32-month period for filing the basic national fee with a surcharge in previous rule 1.495(c) has been eliminated. The International Bureau normally provides the copy of the international application to the Office in accordance with PCT Article 20. At the same time the International Bureau notifies applicant of the communication to the Office. In accordance with PCT Rule 47.1, that notice shall be accepted by all designated offices as conclusive evidence that the communication has duly taken place. Thus, if the applicant desires to enter the national stage, the applicant normally need only check to be sure that notice from the International Bureau has been received and then pay the basic national fee by 30 months from the priority date. The 30-month time limit for submission of the basic national fee and a copy of the international application is not extendable.

Section 1.495(c) is amended to provide that applicants who have provided the basic national fee and a copy of the international application by 30 months from the priority date, but who omit a proper translation, oath or declaration, will receive a notification setting a time period for submission of the omitted requirements. The time period set in the notice can be extended pursuant to § 1.136. Filing of the oath or declaration later than 30 months will require the payment of the surcharge set forth in § 1.492(e). Filing of the translation later than 30 months will require the payment of the processing fee set forth in § 1.492(f).

Section 1.495(d) is amended to clarify the existing and continuing practice that the PCT Article 19 amendments must be submitted by 30 months from the priority date. The deadline for submitting PCT Article 19 amendments may not be extended. The failure to do so will not result in loss of the subject matter of the PCT Article 19 amendments. Applicant may submit that subject matter in a preliminary amendment filed under § 1.121. In many cases, filing an amendment under § 1.121 is preferable since grammatical or idiomatic errors may be corrected.

Section 1.495(e) is amended to specify that a translation into English of any annexes to the international preliminary examining report which are not received by 30 months from the priority date may only be submitted within the time period set in paragraph (c) for submission of any omitted translation of the international application, or oath or declaration. If any required translation of the international application and oath or declaration have been provided to the Office by 30 months, a notice under paragraph (c) will not be sent, and if the translation of annexes is not submitted within 30 months, the annexes will be considered cancelled.

Section 1.495(h) is removed in view of the amendments to sections (b), (c), (d) and (e).

Section 1.495(i) is redesignated as 1.495(h) and specifies when an application that fails to enter the national stage becomes abandoned if the United States was elected prior to 19 months from the priority date. Abandonment occurs at 30 months from the priority date if the basic national fee and a copy of the international application have not been provided to the Office. If they have been provided to

the Office within 30 months and the translation and/or oath or declaration are not filed timely, abandonment occurs upon expiration of the time limit set in the notification pursuant to paragraph (c). Thus, in the latter situation, abandonment would occur at the expiration of the time period set in the notice to file the missing translation, and/or oath or declaration.

Section 1.499 is amended by removing paragraphs (a) through (e) because the amendments to § 1.475 address the unity of invention principles to be applied in the national stage. The reference to the official action being called a requirement for restriction has been eliminated as unnecessary.

Section 1.821(h) is amended to provide that if applicant fails to timely provide the required computer-readable form, the United States International Searching Authority shall search only to the extent that a meaningful search can be carried out.

Section 10.9 is amended to add a new paragraph (c) to be consistent with section 1.455, clarifying that an attorney or agent having the right to act before the national office with which the international application is filed may represent the applicant before the U.S. International Searching Authority or the U.S. International Preliminary Examining Authority. An individual who has the right to practice before the national office with which an international application is filed, and who is not registered under § 10.6, may not prosecute patent applications in the national stage in the Office.

Other Considerations

The rule changes are in conformity with the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., Executive Orders 12291 and 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq.

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the rule changes will not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)), because the rules provide more streamlined and simplified procedures for filing and prosecuting international and national stage applications under the PCT.

The Patent and Trademark Office has determined that these rule changes are not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for customers; individual industries; Federal, state or local government agencies; or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Patent and Trademark Office has also determined that this notice has no federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

These rule changes will not impose any additional burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq. The paperwork burden imposed by adherence to the PCT is currently approved by the Office of Management and Budget under control number 0651–0021.

Notice is hereby given that pursuant to the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6, the Patent and Trademark Office amends title 37 of the Code of Federal Regulations as set forth below.

List of Subjects.

37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions, and patents, Reporting and record keeping requirements, Small businesses.

37 CFR Part 10

Administrative practice and procedure, Inventions and patents, Lawyers, Reporting and record keeping requirements, Trademarks.

For the reasons set forth in the preamble, 37 CFR parts 1 and 10 are amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 6 unless otherwise noted.

2. Section 1.431 is amended by removing paragraph (e) and revising paragraphs (b)(1) through (b)(3)(ii), (c) and (d) to read as follows:

§ 1.431 International application requirements.

* * * * *

(b) An international filing date will be accorded by the United States Receiving Office, at the time to receipt of the international application, provided that:

(1) At least one applicant (§ 1.421) is a United States resident or national and the papers filed at the time of receipt of the international application so indicate (35 U.S.C. 361(a), PCT Art. 11(1)(i)).

(2) The international application is in the English language (35 U.S.C. 361(c), PCT Art. 11(1)(ii)).

(3) The international application contains at least the following elements (PCT Art. 11(1)(iii)):

(i) An indication that it is intended as an international application (PCT Rule 4.2);

(ii) The designation of at least one Contracting State of the International Patent Cooperation Union (§ 1.432);

* * * * *

(c) Payment of the basic portion of the international fee (PCT Rule 15.2) and the transmittal and search fees (§ 1.445) may be made in full at the time the international application papers required by paragraph (b) of this section are deposited or within one month thereafter. If the basic transmittal and search fees are not paid within one month from the date of receipt of the international application, applicant will be notified and given one month within which to pay the deficient fees plus a late payment fee equal to the greater of:

(1) 50% of the amount of the deficient fees up to a maximum amount equal to the basic fee, or

(2) an amount equal to the transmittal fee (PCT Rule 16bis).

The one-month time limit set in the notice to pay deficient fees may not be extended.

(d) If the payment needed to cover the transmittal fee, the basic fee, the search fee, one designation fee and the late payment fee pursuant to paragraph (c) of this section is not timely made, the Receiving Office will declare the international application withdrawn under PCT Article 14(3)(a).

3. Section 1.432 is revised to read as follows:

§ 1.432 Designation of States and payment of designation fees.

(a) The designation of States including an indication that applicant wishes to obtain a regional patent, where applicable, shall appear in the Request upon filing and must be indicated as set forth in PCT Rule 4.9 and section 115 of the Administrative Instructions. Applicant must specify at least one national or regional designation on filing of the international application for a filing date to be granted.

(b) If the fees necessary to cover all the national and regional designations specified in the Request are not paid by the applicant within one year from the priority date or within one month from the date of receipt of the international

application if that month expires after the expiration of one year from the priority date, applicant will be notified and given one month within which to pay the deficient designation fees plus a late payment fee equal to the greater of 50% of the amount of the deficient fees up to a maximum amount equal to the basic fee, or an amount equal to the transmittal fee (PCT Rule 16bis). The one-month time limit set in the notification of deficient designation fees may not be extended. Failure to timely pay at least one designation fee will result in the withdrawal of the international application. The one designation fee may be paid:

(1) Within one year from the priority date,

(2) within one month from the date of receipt of the international application if that month expires after the expiration of one year from the priority date, or

(3) with the late payment fee defined in this paragraph within the time set in the notification of the deficient designation fees. If after a notification of deficient designation fees the applicant makes timely payment, but the amount paid is not sufficient to cover the late payment fee and all designation fees, the Receiving Office will, after allocating payment for the basic, search, transmittal and late payment fees, allocate the amount paid in accordance with PCT Rule 16bis.1(c) and withdraw the unpaid designations. The notification of deficient designation fees pursuant to this paragraph may be made simultaneously with any notification pursuant to § 1.431(c).

(c) On filing the international application, in addition to specifying at least one national or regional designation under PCT Rule 4.9(a), applicant may also indicate under PCT Rule 4.9(b) that all other designations permitted under the Treaty are made. The latter indication under PCT Rule 4.9(b) must be made in a statement on the Request that any designation made under this paragraph is subject to confirmation (PCT Rule 4.9(c)) not later than the expiration of 15 months from the priority date by:

(1) Filing a written notice with the United States Receiving Office specifying the national and/or regional designations being confirmed;

(2) Paying the designation fee for each designation being confirmed; and

(3) Paying the confirmation fee specified in § 1.445(a)(4).

Unconfirmed designations will be considered withdrawn. If the amount submitted is not sufficient to cover the designation fee and the confirmation fee for each designation being confirmed, the Receiving Office will allocate the amount paid in accordance with any priority of designations specified by applicant. If applicant does not specify and priority of designations, the allocation of the amount paid will be made in accordance with PCT Rule 16bis.1(c).

4. Section 1.434 is amended by revising paragraph (a) to read as follows:

§ 1.434 The request.

(a) The request shall be made on a standardized form (PCT Rules 3 and 4). Copies of printed Request forms are available from the Patent and Trademark Office. Letters requesting printed forms should be marked "Box PCT."

* * * * *

5. Section 1.445 is amended by adding new paragraph (a)(4) to read as follows:

§ 1.445 International application filing, processing and search fees.

(a) * * *

(4) A confirmation fee (PCT Rule 96) equal to 50% of the sum of designation fees for the national and regional designations being confirmed (§ 1.432(c)).

* * * * *

6. Section 1.446 is amended by revising paragraph (d) and adding paragraph (e) to read as follows:

§ 1.446 Refund of international application filing and processing fees.

* * * * *

(d) The international and search fees will be refunded if no international filing date is accorded or if the application is withdrawn before transmittal of the record copy to the International Bureau (PCT Rules 15.6 and 16.2). The search fee will be refunded if the application is withdrawn before transmittal of the search copy to the International Searching Authority. The transmittal fee will not be refunded.

(e) The handling fee (§ 1.482(b)) will be refunded (PCT Rule 57.6) only if:

(1) The Demand is withdrawn before the Demand has been sent by the International Preliminary Examining Authority to the International Bureau, or

(2) The Demand is considered not to have been submitted (PCT Rule 54.4(a)).

7. Section 1.451 is amended by revising paragraph (a) to read as follows:

§ 1.451 The priority claim and priority document in an international application.

(a) The claim for priority must be made on the Request (PCT Rule 4.10) in a manner complying with sections 110 and 115 of the Administrative Instructions.

* * * * *

8. Section 1.455 is amended by revising paragraph (a) to read as follows:

§ 1.455 Representation in international applications.

(a) Applicants of international applications may be represented by attorneys or agents registered to practice before the Patent and Trademark Office or by an applicant appointed as a common representative (PCT Art. 49, Rules 4.8 and 90 and § 10.10). If applicants have not appointed an attorney or agent or one of the applicants to represent them, and there is more than one applicant, the applicant first named in the request and who is entitled to file in the U.S. Receiving Office shall be considered to be the common representative of all the applicants. An attorney or agent having the right to practice before a national office with which an international application is filed and for which the United States is an International Searching Authority or International Preliminary Examining Authority may be appointed to represent the applicants in the international application before that authority. An attorney or agent may appoint an associate attorney or agent who shall also then be of record (PCT Rule 90.1(d)). The appointment of an attorney or agent, or of a common representative, revokes any earlier appointment unless otherwise indicated (PCT Rule 90.6 (b) and (c)).

* * * * *

9. Section 1.475 is revised to read as follows:

§ 1.475 Unity of invention before the International Searching Authority, the International Preliminary Examining Authority and during the national stage.

(a) An international and a national stage application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept ("requirement of unity of invention"). Where a group of inventions is claimed in an application, the requirement of unity of invention shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

(b) An international or a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories:

(1) A product and a process specially adapted for the manufacture of said product; or

(2) A product and a process of use of said product; or

(3) A product, a process specially adapted for the manufacture of the said product, and a use of the said product; or

(4) A process and an apparatus or means specifically designed for carrying out the said process; or

(5) A product, a process specially adapted for the manufacture of the said product, and an apparatus or means specifically designed for carrying out the said process.

(c) If an application contains claims to more or less than one of the combinations of categories of invention set forth in paragraph (b) of this section, unity of invention might not be present.

(d) If multiple products, processes of manufacture or uses are claimed, the first invention of the category first mentioned in the claims of the application and the first recited invention of each of the other categories related thereto will be considered as the main invention in the claims, see PCT Article 17(3)(a) and § 1.476(c).

(e) The determination whether a group of inventions is so linked as to form a single general inventive concept shall be made without regard to whether the inventions are claimed in separate claims or as alternatives within a single claim.

10. Section 1.476 is amended by revising paragraph (a) to read as follows:

§ 1.476 Determination of unity of invention before the International Searching Authority.

(a) Before establishing the international search report, the International Searching Authority will determine whether the international application complies with the requirement of unity of invention as set forth in § 1.475.

* * * * *

11. Section 1.480 is amended by revising paragraph (b) to read as follows:

§ 1.480 Demand for international preliminary examination.

* * * * *

(b) The Demand shall be made on a standardized form. Copies of printed Demand forms are available from the Patent and Trademark Office. Letters requesting printed Demand forms should be marked "Box PCT".

* * * * *

12. Section 1.482 is amended by revising paragraphs (a)(2)(i) and (b) to read as follows:

§ 1.482 International preliminary examination fees.

(a) * * *

(2) An additional preliminary examination fee when required, per additional invention:

(i) Where the International Searching Authority for the international application was the United States Patent and Trademark Office.....$140.00

* * * * *

(b) The handling fee is due on filing the Demand.

13. Section 1.484 is amended by revising paragraph (b) to read as follows:

§ 1.484 Conduct of international preliminary examination.

* * * * *

(b) International preliminary examination will begin promptly upon receipt of a Demand which requests examination based on the application as filed, or as amended by an amendment which has been received by the United States International Preliminary Examining Authority. Where a Demand requests examination based on a PCT Article 19 amendment which has not been received, examination may begin at 20 months without receipt of a PCT Article 19 amendment. Where a Demand requests examination based on a PCT Article 34 amendment which has not been received, applicant will be notified and given a time period within which to submit the amendment. Examination will begin after the earliest of:

(1) Receipt of the amendment;

(2) Receipt of applicant's statement that no amendment will be made; or

(3) Expiration of the time period set in the notification.

No international preliminary examination report will be established prior to issuance of an international search report.

* * * * *

14. Section 1.485 is revised to read as follows:

§ 1.485 Amendments by applicant during international preliminary examination.

(a) The applicant may make amendments at the time of filing of the Demand and within the time limit set by the International Preliminary Examining Authority for response to any notification under § 1.484(b) or to any written opinion. Any such amendments must:

(1) Be made by submitting a replacement sheet for every sheet of the application which differs from the sheet it replaces unless an entire sheet is cancelled, and

(2) Include a description of how the replacement sheet differs from the replaced sheet.

(b) If an amendment cancels an entire sheet of the international application, that amendment shall be communicated in a letter.

§ 1.487 [Removed]

15. Section 1.487 is removed.

16. Section 1.488 is amended by revising paragraph (a) to read as follows:

§ 1.488 Determination of unity of invention before the International Preliminary Examining Authority.

(a) Before establishing any written opinion or the international preliminary examination report, the International Preliminary Examining Authority will determine whether the international application complies with the requirement of unity of invention as set forth in § 1.475.

* * * * *

17. Section 1.492 is amended by revising the introductory clause and paragraph (e) to read as follows:

§ 1.492 National stage fees.

The following fees and charges are established for international applications entering the national stage under 35 U.S.C. 371:

* * * * *

(e) Surcharge for filing the oath or declaration later than 20 months from the priority date pursuant to § 1.494(c) or later than 30 months from the priority date pursuant to § 1.495(c):

By a small entity (§ 1.9(f)).....$65.00
By other than a small entity.....$130.00

* * * * *

18. Section 1.494 is amended by removing paragraph (h) and by revising paragraphs (a), (b), (c), (d) and (g) to read as follows:

§ 1.494 Entering the national stage in the United States of America as a Designated Office.

(a) Where the United States of America has not been elected by the expiration of 19 months from the priority date (see § 1.495), the applicant must fulfill the requirements of PCT Article 22 and 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. International applications for which those requirements are timely fulfilled will enter the national stage and obtain an examination as to the patentability of the invention in the United States of America.

(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 20 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)). The 20-month time limit may not be extended.

(c) If applicant complies with paragraph (b) of this section before expiration of 20 months from the priority date but omits:

(1) a translation of the international application, as filed, into the English language, if it was originally filed in another language (35 U.S.C. 371(c)(2)) and/or

(2) the oath or declaration of the inventor (35 U.S.C. 371(c)(4); see § 1.497), applicant will be so notified and given a period of time within which to file the translation and/or oath or declaration in order to prevent abandonment of the application. The payment of the processing fee set forth in § 1.492(f) is required for acceptance of an English translation later than the expiration of 20 months after the priority date. The payment of the surcharge set forth in § 1.492(e) is required for acceptance of the oath or declaration of the inventor later than the expiration of 20 months after the priority date. A copy of the notification mailed to applicant should accompany any response thereto submitted to the Office.

(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 20 months from the priority date. Amendments under PCT Article 19 which are not received by the expiration of 20 months from the priority date will be considered to be cancelled. The 20-month time limit may not be extended.

* * * * *

(g) An international application becomes abandoned as to the United States 20 months from the priority date if the requirements of paragraph (b) of this section have not been complied with within 20 months from the priority date where the United States has been designated but not elected by the expiration of 19 months from the priority date. If the requirements of paragraph (b) of this section are complied with within 20 months from the priority date but any required translation of the international application as filed and/or the oath or declaration are not timely filed, an international application will become abandoned as to the United States upon expiration of the time period set pursuant to paragraph (c) of this section.

19. Section 1.495 is amended by removing paragraph (i) and by revising paragraphs (a), (b), (c), (d), (e) and (h) to read as follows:

§ 1.495 Entering the national stage in the United States of America as an Elected Office.

(a) Where the United States of America has been elected by the expiration of 19 months from the priority date, the applicant 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. International applications for which those requirements are timely fulfilled will enter the national stage and obtain an examination as to the patentability of the invention in the United States of America.

(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 30 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)). The 30-month time limit may not be extended.

(c) If applicant complies with paragraph (b) of this section before expiration of 30 months from the priority date but omits:

(1) A translation of the international application, as filed, into the English language, if it was originally filed in another language (35 U.S.C. 371(c)(2)) and/or

(2) The oath or declaration of the inventor (35 U.S.C. 371(c)(4); see § 1.497), applicant will be so notified and given a period of time within which to file the translation and/or oath or declaration in order to prevent abandonment of the application. The payment of the processing fee set forth in § 1.492(f) is required for acceptance of an English translation later than the expiration of 30 months after the priority date. The payment of the surcharge set forth in § 1.492(e) is required for acceptance of the oath or declaration of the inventor later than the expiration of 30 months after the priority date. A copy of the notification mailed to applicant should accompany any response thereto submitted to the Office.

(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 30 months from the priority date. Amendments under PCT Article 19 which are not received by the expiration of 30 months from the priority date will be considered to be cancelled. The 30-month time limit may not be extended.

(e) A translation into English of any annexes to the international preliminary examination report, if the annexes were made in another language, must be furnished not later than the expiration of 30 months from the priority date. Translations of the annexes which are not received by the expiration of 30 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 cancelled. The 30-month time limit may not be extended.

* * * * *

(h) An international application becomes abandoned as to the United States 30 months from the priority date if the requirements of paragraph (b) of this section have not been complied with within 30 months from the priority date and the United States has been elected by the expiration of 19 months from the priority date. If the requirements of paragraph (b) of this section are complied with within 30 months from the priority date but any required translation of the international application as filed and/or the oath or declaration are not timely filed, an international application will become abandoned as to the United States upon expiration of the time period set pursuant to paragraph (c) of this section.

20. Section 1.499 is revised to read as follows:

§ 1.499 Unity of invention during the national stage.

If the examiner find that a national stage application lacks unity of invention under § 1.475, the examiner may in an Office action require the applicant in the response to that action to elect the invention to which the claims shall be restricted. Such requirement may be made before any action on the merits but may be made at any time before the final action at the

discretion of the examiner. Review of any such requirement is provided under §§ 1.143 and 1.144.

21. Section 1.821 is amended by revising paragraph (h) to read as follows:

§ 1.821 Nucleotide and/or amino acid sequence disclosures in patent applications.

* * * * *

(h) If any of the requirements of paragraphs (b) through (f) of this section are not satisfied at the time of filing, in the United States Receiving Office, an international application under the Patent Cooperation Treaty (PCT), applicant has one month from the date of a notice which will be sent requiring compliance with the requirements, or such other time as may be set by the Commissioner, in which to comply. Any submission in response to a requirement under this paragraph must be accompanied by a statement that the submission does not include new matter or go beyond the disclosure in the international application as filed. Such a statement must be a verified statement if made by a person not registered to practice before the Office. If applicant fails to timely provide the required computer readable form, the United States International Searching Authority shall search only to the extent that a meaningful search can be performed.

* * * * *

PART 10—[AMENDED]

22. The authority citation for 37 CFR part 10 will continue to read as follows:

Authority: 5 U.S.C. 500; 15 U.S.C. 1123; 35 U.S.C. 6, 31, 32, 41.

23. Section 10.9 is amended by adding new paragraph (c) to read as follows:

§ 10.9 Limited recognition in patent cases.

* * * * *

(c) An individual not registered under § 10.6 may, if appointed by applicant to do so, prosecute an international application only before the U.S. International Searching Authority and the U.S. International Preliminary Examining Authority, provided: the individual has the right to practice before the national office with which the international application is filed (PCT Art. 49, Rule 90 and § 1.455).

Dated: January 7, 1993.

Douglas B. Comer,

Acting Assistant Secretary and Acting Commissioner of Patents and Trademarks.

[FR Doc. 93–823 Filed 1–13–93; 8:45 am]

BILLING CODE 3510–16–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL–4552–4]

Designation of Areas for Air Quality Planning Purposes; Wyoming; Redesignation of Particulate Matter Attainment Areas

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: In this action EPA is approving a February 11, 1992 request from the Governor of Wyoming to redesignate the Powder River Basin in portions of Campbell and Converse Counties as a separate particulate matter attainment area under Section 107 of the Clean Air Act, as amended (CAA). In addition, EPA is redesignating two additional particulate matter attainment areas within the Powder River Basin which represent the baseline areas of two major sources that had submitted complete prevention of significant (PSD) applications after the major source baseline date. EPA is approving the State's redesignation request because the State has adequately followed the applicable federal requirements and policy. Approval of the section 107 redesignation eliminates the minor source baseline date for particulate matter which previously applied in the Powder River Basin attainment area. According to the State regulations, the minor source baseline date will not be triggered until the submittal of the first complete PSD permit application for a major stationary source or major modification locating in or significantly impacting the Powder River Basin particulate matter attainment area, or January 1, 1996, whichever occurs first. Thus, only after the new minor source baseline date is established will changes in emissions at minor sources affect the increment.

EFFECTIVE DATE: This action will become effective on March 15, 1993 unless notice is received by February 16, 1993 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the revisions are available for public inspection between 8 a.m. and 4 p.m. Monday through Friday at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, suite 500, Denver, CO 80202–2466.

Air Quality Division, Department of Environmental Quality, 122 West 25th Street, Herschler Building, Cheyenne, Wyoming 82002.

FOR FURTHER INFORMATION CONTACT:

Vicki Stamper, Environmental Protection Agency, Region VIII, Air Programs Branch, suite 500, Denver, CO 80202–2466, (303) 293–1765.

SUPPLEMENTARY INFORMATION:

I. Background of Redesignation Request

The State's regulations had previously established August 7, 1977 as the baseline date for total suspended particulate (TSP), and the entire State was defined as the baseline area. This meant that all major, as well as minor, sources constructed anywhere in the State after August 7, 1977 would consume the available TSP increment. The establishment of a statewide baseline date and baseline area was more stringent than required by the federal PSD regulations. Under the federal regulations, the minor source baseline date for TSP is defined as the earliest date after August 7, 1977 on which the first complete PSD application was submitted by a major stationary source or a major modification (see 40 CFR 52.21(a)(14)(iii)). In addition, the federal definition for "baseline area" provides states with the option of establishing numerous baseline areas under Section 107(d) of the CAA, as long as the baseline areas did not intersect or were not smaller than the area of 1 $\mu g/m^3$ ambient impact of any major stationary source or major modification which established the minor source baseline date or which was subject to PSD permitting requirements (see 40 CFR 52.21(a)(15)).

On September 5, 1990, the State adopted revisions to its regulations, providing definitions for "minor source baseline date" and "baseline area" consistent with the federal definitions and, thus, allowing for the establishment of the Powder River Basin as a separate baseline area with a new minor source baseline date. The regulatory revisions were submitted for approval in the State Implementation Plan (SIP) on November 20, 1990. Because the revisions were consistent with federal requirements, EPA promulgated approval of the revisions on May 24, 1991 (56 FR 23811).

Subsequent to EPA's approval of the regulatory revisions, on February 11, 1992, the State requested formal redesignation of the Powder River Basin as a separate Section 107 particulate matter attainment area, measured in terms of TSP.

II. Technical Adequacy Review of Request

EPA has specific policy governing the redesignation of baseline areas, as discussed in the August 7, 1980 **Federal Register** in which the current federal PSD regulations were adopted (see 45 FR 52676). That notice provides for redefining baseline areas through area redesignations pursuant to Section 107 of the CAA, "as long as no PSD source has located in, or significantly impacted on a clean area being considered for redesignation, the area can be redesignated as a new attainment or unclassifiable area, even if the area [was] previously part of a larger clean area in which the baseline date had been set" (see 45 FR 52716). Under this redesignation policy, an ambient air quality impact greater than or equal to 1 $\mu g/m^3$ is considered to be a significant impact (see 45 FR 52716). EPA's policy was reaffirmed in EPA's October, 1990 draft New Source Review Workshop Manual (see page C.9).

The State's February 11, 1992 submittal consisted of the following: (1) A description of the boundary of the proposed revisions to the Section 107 particulate matter attainment area; (2) a description of the PSD permitting history of the area, which indicated that two major sources in the Powder River Basin, Pacific Power and Light and Hampshire Energy, had submitted complete PSD permit applications after the major source baseline date; (3) a description of the boundaries of the 1 $\mu g/m^3$ significant impact areas for the two major sources in the Powder River Basin; (4) maps of the 1 $\mu g/m^3$ significant impact area of the two major sources; and (5) supporting modeling results which were used to define the 1 $\mu g/m^3$ significant impact areas of the major sources. Basically, the area which the State was requesting redesignation was defined as the area encompassing the Powder River Basin excluding the significant impact areas of the two major sources which had submitted complete PSD permit applications.

EPA's review of the modeled 1 $\mu g/m^3$ impact areas for the two major sources identified deficiencies in the type of model used to estimate the impact areas. EPA's concerns were that the State may have underestimated the impact areas of the two major sources because they did not take into account the effects of complex terrain, as required by EPA's Guideline on Air Quality Models. These deficiencies were discussed with the State in a May 14, 1992 meeting, and it was agreed that EPA would run the required models using the State's data for the major sources and meteorological conditions.

EPA subsequently completed the modeling analysis for the two major sources in the Powder River Basin following the procedures outlined in the Guideline on Air Quality Models. In accordance with the intermediate terrain policy, the highest predicted ambient concentration from the modeling results was used in determining the extent of the 1 $\mu g/m^3$ impact area in elevated terrain areas. The modeling resulted in an increased impact area for the Hampshire Energy site. Specifically, the impact area of the Hampshire Energy site was extended approximately one-half mile both to the east and south of the original modeled boundary. The modeled impact area of Pacific Power and Light remained unchanged. In a July 24, 1992 letter to the State, EPA provided the results of its modeling analyses and the revised boundaries of the 1 $\mu g/m^3$ impact area for the Hampshire Energy site.

The State responded to EPA's modeling results in a September 18, 1992 letter, in which a revised boundary description for the 1 ug/m^3 significant impact area of the Hampshire Energy site consistent with EPA's modeled results was submitted. In that letter, the State requested that the described changes be made part of the Powder River Basin redesignation request submitted to EPA on February 11, 1992, and the EPA proceed with approval of the request.

The State has followed the terms of EPA's redesignation policy in its February 11, 1992 and September 18, 1992 requests to establish the Powder River Basin as a separate Section 107 particulate matter attainment area. Authority for the State's action is provided for in Section 107(d)(3)(D) of the CAA, which states: "the Governor of any State may, on the Governor's own motion, submit to the Administrator a revised designation of any area or portion thereof within the State [and EPA] shall approve such redesignation." Therefore, EPA is approving the State's request to redesignate the Powder River Basin as a Section 107 particulate matter attainment area. In addition, EPA is redesignating the areas which represent the baseline areas for Hampshire Energy and Pacific Power and Light as separate particulate matter attainment areas.

This approval eliminates the minor source baseline date for particulate matter that was previously established in the Powder River Basin attainment area. According to the revised State regulations, the minor source baseline date for the Powder River Basin attainment area will not be triggered until the submittal of the first complete PSD permit application for a major stationary source or major modification locating in or significantly impacting the Powder River Basin particulate matter attainment area, or January 1, 1996, whichever occurs first. Thus, minor source emissions that exist on the Powder River Basin attainment area until the time that the minor source baseline date is triggered will become part of background emissions for the area. Once the minor source baseline date is triggered, all new growth from minor sources will begin consuming increment. The minor source baseline dates for the Hampshire Energy and Pacific and Light particulate matter attainment area are the dates that their respective PSD applications were deemed complete.

Final Action: EPA is approving the State of Wyoming's request to redesignate the Powder River Basin as a Section 107 particulate matter attainment area. The Powder River Basin particulate matter attainment area is defined as follows: That area bounded by Township 40 through 52 North, and Ranges 69 through 73 West, inclusive of the Sixth Principal Meridian, Campbell and Converse Counties, excluding the Pacific Power and Light particulate matter attainment area and the Hampshire Energy particulate matter attainment area. The Pacific Power and Light particulate matter attainment area is defined as follows: NW¼ of Section 27, T50N, R71W, Campbell County, Wyoming. The Hampshire Energy particulate matter attainment area is defined as follows: Section 6 excluding the SW¼; E½ Section 7; Section 17 excluding the SW¼; Section 14 excluding the SE¼; Sections 2, 3, 4, 5, 8, 9, 10, 11, 15, 16 of T48N, R70W and Section 26 excluding the NE¼; SW¼ Section 23; Sections 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34, 35 of T49N, R70W.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. Section 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on

January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the CAA, petitions for judicial review of this section must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from the date of publication). Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see Section 307(b)(2)).

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: December 23, 1992.

Jack W. McGraw,

Acting Regional Administrator.

40 CFR Part 81 is amended as follows:

PART 81—[AMENDED]

1. The authority citation for Part 81 is revised to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 81.351 is amended by revising the Wyoming TSP table to read as follows:

§ 81.351 Wyoming.

WYOMING—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Trona Industrial Area (Sweetwater County)		X		
Powder River Basin				X
Campbell County (part)				
Converse County (part)				
That area bounded by Township 40 through 52 North, and Ranges 69 through 73 West, inclusive of the Sixth Principal Meridian, Campbell and Converse Counties, excluding the areas defined as the Pacific Power and Light attainment area and the Hampshire Energy attainment area				
Pacific Power and Light Area				X
Campbell County (part)				
That area bounded by NW¼ of Section 27, T50N, R71W, Campbell County, Wyoming				
Hampshire Energy Area				X
Campbell County (part)				
That area bounded by Section 6 excluding that SW¼; E½ Section 7; Section 17 excluding the SW¼; Section 14 excluding the SE¼; Sections 2, 3, 4, 5, 8, 9, 10, 11, 15, 16 of T48N, R70W and Section 26 excluding the NE¼; SW¼ Section 23; Sections 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34, 35 of T49N, R70W				
Rest of State				X

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[FR Doc. 93–934 Filed 1–13–93; 8:45 am]

BILLING CODE 6560–50–M

COMMISSION OF CIVIL RIGHTS

45 CFR Part 708

Regulations for Collection by Salary Offset From Indebted Current or Former Employees

AGENCY: United States Commission on Civil Rights .

ACTION: Final regulation.

SUMMARY: This regulation implements the collection procedures of the Debt Collection Act of 1982, Public Law 97–365, codified in 5 U.S.C. 5514. Without the Debt Collection Act of 1982, the U.S. government would be unable to administratively deduct from an employee's current salary any amount to satisfy a debt without the employee's consent. The only exception to this would be the collection of taxes (26 U.S.C. 6331). This regulation permits the Commission to set off an employee's current salary to satisfy a debt to another agency of the United States or to the Commission, and to request another agency to offset a debt to the Commission from the salary of one of their current employees. This authority is necessary since involuntary wage garnishment is not a collection tool available to the Federal government. At the same time, the due process rights of the U.S. employees are protected.

EFFECTIVE DATE: This regulation shall become effective March 15, 1993.

ADDRESSES: Solicitor's Unit, United States Commission on Civil Rights, 624 9th Street, NW., Washington, DC 20425.

Copies of this notice are available on tape for those with impaired visions or other physical handicap. They may be obtained at the above address.

FOR FURTHER INFORMATION CONTACT: Emma Monroig, Solicitor, (202) 376–8351, TDD (202) 376–2683.

Background: Under the Debt Collection Act of 1982, when the head of a Federal agency determines that an employee of an agency is indebted to the United States or is notified by the head of another Federal agency that an agency employee is indebted to the United States, the employee's debt may be offset against his/her salary. Certain due process rights must be afforded to an employee before salary offset deductions begin.

As required by the Debt Collection Act of 1982, this regulation is consistent with salary offset regulations issued by the Office of Personnel Management on July 3, 1984, 49 FR 27472, codified in 5 CFR part 550 subpart K.

PAPERWORK REDUCTION ACT: Under section 3518 of the Paperwork Reduction Act of 1980, 5 CFR 1320.3(c) the information collection provisions contained in this regulation are not subject to review and approval by the Office of Management and Budget.

Executive Order 12291

This rule has been reviewed and determined not to be a "major rule" as defined by Executive Order 12291, dated February 17, 1981 because it will not result in (1) An annual effect on the economy of more than $100 million or more; (2) a major increase in costs and