

implementation of the rule will have no adverse effect 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.

Finally, the Secretary of the Panama Canal Commission certifies these changes meet the applicable standards set out in sections 2(a) and 2(b)(2) of Executive Order 12778.

List of Subjects in 35 CFR Part 133

Navigation, Panama Canal, Vessels.

For the reasons stated in the preamble, the Panama Canal Commission is amending 35 CFR part 133 as follows:

PART 133—TOLLS FOR USE OF CANAL

1. The authority citation for part 133 continues to read as follows:

Authority: 22 U.S.C. 3791–3792, 3794.

2. Revise the heading of § 133.74 and add paragraph (c) to read as follows:

§ 133.74 Same; exception; payment secured by deposit of cash or bonds; credit cards.

* * * * *

(c) Vessels assessed a toll of not more than \$1,500 under § 133.1(d) may pay the respective toll and any charges for ancillary services by credit card, under such conditions as are established by the Commission.

Dated: May 22, 1998.

John A. Mills,

Secretary.

[FR Doc. 98–14181 Filed 5–29–98; 8:45 am]

BILLING CODE 3640–04–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket #: 980511124–8124–01]

Revision of Patent Cooperation Treaty Application Procedure

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Interim rule with request for public comments.

SUMMARY: The Patent and Trademark Office (Office or USPTO) is amending its rules of practice relating to applications filed under the Patent Cooperation Treaty (PCT) to conform the United States rules of practice with the corresponding changes to the

Regulations under the PCT which become effective July 1, 1998. The result will be more streamlined procedures for filing and prosecuting international applications under the PCT.

DATES: *Effective date:* July 1, 1998.

Comment deadline date: To be ensured of consideration, written comments must be received on or before July 31, 1998. No public hearing will be held.

ADDRESSES: Address written comments to: Box Comments—Patents, Assistant Commissioner for Patents, Washington, D.C. 20231, or by facsimile to (703) 308–6459, marked to the attention of Richard Lazarus. Comments submitted by facsimile should be followed by a copy of the comments submitted by mail. The Office would also prefer that comments submitted by mail be accompanied by a copy of the comments in a standard word processing format on a 3 1/4 inch disk.

The comments will be available for public inspection in Crystal Plaza Two, room 7A04, 2011 South Clark Place, Arlington, Virginia, and will be available through anonymous file transfer protocol (ftp) via the Internet (address: ftp.uspto.gov). Since comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT:

Richard Lazarus, PCT Legal Office Supervisor, by telephone at (703) 308–6451; or by mail addressed to: Box PCT, Assistant Commissioner for Patents, Washington, DC 20231; or by facsimile to (703) 308–6459, marked to the attention of Richard Lazarus.

SUPPLEMENTARY INFORMATION: During a September–October 1997 meeting of the Governing Bodies of the World Intellectual Property Organization (WIPO), the PCT Assembly adopted amendments to the PCT Regulations, which will take effect on July 1, 1998. The amended PCT Regulations were published in the *Official Gazette* at 1210 *Off. Gaz. Pat. Office* 29 (May 12, 1998). The resulting changes to PCT practice will improve filing and processing procedures for applicants filing international applications.

This interim rule amends the United States rules of practice to conform them to corresponding changes made to the PCT Regulations that will take effect on July 1, 1998. The interim rules will also be effective on July 1, 1998. The Office will publish a final rule either confirming the adoption of these interim rules as final rules or adopting final rules which reflect changes made based

upon the public comments received in response to this interim rule.

Applicants are hereby notified that PCT Rules 20.4(c) and 26.3ter(a) and (c) as amended are not compatible with the national law of the United States, and thus the USPTO has taken a reservation on adherence to these Rules through its notification to the Director General of WIPO to such effect. See PCT Rules 20.4(d) and 26.3ter(b) and (d). Applicants of international applications in the United States need to be aware of these differences to avoid the consequences of failing to comply with the requirements of United States law. For example, PCT Rules 20.4(c) and 26.3ter(a) and (c) permit an international filing date to be accorded notwithstanding that portions of the international application are in a language not acceptable to the Receiving Office. 35 U.S.C. 361 does not permit this practice and a filing date will not be accorded by the USPTO under these provisions or circumstances. However, if any portion of the international application is not in English, but is in a language of filing accepted by the International Bureau, it will be forwarded to the International Bureau pursuant to the provisions of PCT Rule 19.4. The International Bureau will act as a Receiving Office and accord a receipt date as of the receipt date in the USPTO.

Similarly, the USPTO continues not to adhere to the unchanged provisions of PCT Rule 49.5(cbis) and (k) with respect to the translation requirements for United States national stage applications (35 U.S.C. 371(c)(2)). See PCT Rule 49.5(l).

The above noted changes to the PCT Regulations include the addition of new PCT Rules 89bis and 89ter (directed to electronic filing and processing of international applications) which will enter into force at the same time as the modifications to the Administrative Instructions implementing those PCT Rules. Implementation of PCT Rules 89bis and 89ter is optional with each national office. In the event that the USPTO decides to implement PCT Rules 89bis and 89ter, the USPTO will provide notice to that effect in the **Federal Register** and *Official Gazette*.

Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, Part 1, is amended as follows:

Section 1.14(g) is added to comply with the amendments to PCT Rule 94. After international publication and establishment of the international preliminary examination report, third parties are permitted access to

documents from the file of the International Preliminary Examining Authority in the USPTO's elected office file (not the international preliminary examination file) to the same extent as access to United States national applications.

Section 1.412(c)(6) is amended to conform to the changes to PCT Rule 19.4(a). The change relates to the procedures for the filing of international applications and their processing by the Receiving Office. The change broadens the circumstances in which an international application may be transmitted to the International Bureau as the Receiving Office and adds more flexibility for applicants and the United States Receiving Office in determining whether to forward the international application to the International Bureau as the Receiving Office. When the international application is filed with the USPTO and the language in which the application is filed is not accepted by the USPTO, or if the applicant does not have the requisite residence or nationality, the application may be forwarded to the International Bureau for receiving Office processing.

Section 1.416(c) is amended to reflect the addition of new PCT Rule 59.3. The change provides a safeguard in the case of a Demand filed with the USPTO which is not competent as the International Preliminary Examining Authority. The Office forwards the Demand and the competent International Preliminary Examining Authority processes the Demand based on the date of receipt in the USPTO. This section is rewritten to: (1) redesignate current paragraphs (c)(2) through (c)(6) as paragraphs (c)(3) through (c)(7), respectively; and (2) add "[f]orwarding Demands in accordance with PCT Rule 59.3" as a new paragraph (c)(2).

Section 1.419 is added pursuant to 44 U.S.C. 3512(a) and 5 CFR 1320.5(b). As the Office cannot add the information specified in 5 CFR 1320.5(b) to the forms prescribed by the International Bureau, the Office is adopting § 1.419 to provide the information display required by 5 CFR 1320.5(b)(2)(i). See 5 CFR 1320.5(b)(2)(ii)(D). Section 1.419 specifically provides: (1) that the collection of information in 37 CFR Part 1, Subpart C, has been reviewed and approved by the Office of Management and Budget under control number 0651-0021; (2) that § 1.419 constitutes the display required by 44 U.S.C. 3512(a) and 5 CFR 1320.5(b)(2)(i) for the collection of information under Office of Management and Budget control number 0651-0021; and (3) a notice under 5 CFR 1320.5(b)(2)(i) that:

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid Office of Management and Budget control number.

Section 1.431 is amended to reflect corresponding changes to PCT Rules 14, 15, 16 and 16bis. This section is amended to: (1) Provide in paragraph (c) that the basic, transmittal, and search fee payable is the basic, transmittal, and search fee in effect on the filing date of the international application (see PCT Rule 14.1(c), 15.4(a), and 16.1(f)); (2) eliminate the unassociated text following former paragraph (c)(2); (3) add "prior to the sending of a notice of deficiency"; and (4) add a reference to PCT Rule 16bis.1(e) in paragraph (d). These changes will reduce mistakes in paying fees where different fees have different times for payment. The change simplifies the fees due to be the fee amounts (basic, transmittal and search) in effect on the date of receipt of the international application. Additionally, the change provides the additional benefit of delaying the effect of the sanction until the sending of the notice of such sanction.

Section 1.432 is amended to reflect corresponding changes to PCT Rules 15 and 16bis. The changes relate to the time periods and amounts due for the payment of designation and confirmation fees. Paragraph (b) has been rewritten, for the purposes of clarity, as paragraphs (b)(1) and (b)(2), with paragraph (b)(2) comprising the unassociated text following former paragraph (b)(3). Additionally, former paragraph (b)(3), now paragraph (b)(1)(iii), has been amended to include the timeliness provision of new PCT Rule 16bis.1(e).

Section 1.432 is further amended to designate paragraph (c) as paragraphs (d), (d)(1) and (d)(2) for better clarity.

Section 1.432 is further amended to add a new paragraph (c) providing the amount payable for the designation fee set forth in § 1.432(b). Section 1.432(c)(1) provides that if the designation fee is paid in full within one month from the date of receipt of the international application, the amount payable for the designation fee is the designation fee in effect on the filing date of the international application. Section 1.432(c)(2) provides that if the designation fee is paid in full later than one month from the date of receipt of the international application, but within one year from the priority date, the amount payable for the

designation fee is the designation fee in effect on the date such fee is paid in full. Section 1.432(c)(3) provides that if the designation fee was due one year from the priority date, and such fee is paid in full later than one month from the date of receipt of the international application and later than one year from the priority date, the amount payable for the designation fee is the designation fee in effect on the date one year from the priority date. Section 1.432(c)(4) provides that if the designation fee was due one month from the international filing date and after one year from the priority date, and such fee is paid in full later than one month from the date of receipt of the international application and later than one year from the priority date, the amount payable for the designation fee is the designation fee in effect on the international filing date.

The addition of new paragraph (c) reflects the corresponding changes to PCT Rules 15.4(b), 15.4(c) and 16bis.1.

Section 1.435 is amended to conform to the change to PCT Rule 13ter incorporating the common computer readable form standard prescribed by the Administrative Instructions. The amendments to Section 1.435 change "Administrative Instruction 204" to "sections 204 and 208 of the Administrative Instructions."

Section 1.445 is amended to re-insert paragraphs (a)(4) and (a)(5) that were inadvertently deleted. Section 1.445(a)(4) was inadvertently omitted in *Revision of Patent Fees*; Final Rule Notice, 59 FR 43736 (August 25, 1994), 1165 *Off. Gaz. Pat. Office* 132 (August 30, 1994), and § 1.445(a)(5) was inadvertently omitted in *Revision of Patent and Trademark Fees*; Final Rule Notice, 60 FR 41018 (August 11, 1995), 1177 *Off. Gaz. Pat. Office* 171 (August 29, 1995).

Section 1.451 is amended to conform to the changes made to PCT Rule 4.10 and the addition of new PCT Rule 26bis. The changes reflect the ability of applicants to now add or correct priority claims after the filing of the international application. This section is amended to: (1) add a new paragraph (d) which provides that the applicant may correct or add a priority claim in accordance with PCT Rule 26bis.1; and (2) add the phrase "subject to paragraph (d)" to paragraph (a).

Section 1.461 is amended to reflect the corresponding change to PCT Rule 19.4 wherein an international application filed in error with the USPTO may be forwarded to the International Bureau for processing as Receiving Office. The new provisions expand the flexibility for forwarding an

international application which is filed with, but not accepted by, the USPTO.

Section 1.465 is amended to conform to the changes made to PCT Rule 4.10 and the addition of new PCT Rule 26bis concerning the time period in which applicant may add or correct a priority claim. Under the new provisions, an applicant may add or correct a priority claim until sixteen months from the priority date, or where the priority date is changed, sixteen months from the priority date as so changed, whichever period expires first. All priority claim additions or changes must, however, be submitted no later than four months from the international filing date. Section 1.465(b) is amended to change the phrase "cancelled under PCT Rule 4.10(d), or considered not to have been made under PCT Rule 4.10(b)" to "corrected or added under PCT Rule 26bis.1(a), or withdrawn under PCT Rule 90bis.3, or considered not to have been made under PCT Rule 26bis.2." Section 1.465(b) is further amended to change the phrase "computing time limits" to "computing any non-expired time limits" to be in accord with the provision of new PCT Rules 26bis.1(c). As suggested by the latter amendment to Section 1.465(b), time limits which have already expired at the time of the addition, correction, or withdrawal of a priority claim are not subject to recomputation. Section 1.465(c) is amended to change the reference to PCT "Rule 4.10(d)" to "PCT Rule 26bis.2(b)."

Section 1.471 is amended to clarify the rule to conform it to amended PCT Rule 12. Section 1.471 is amended to: (1) Indicate that it also applies to corrections submitted to the United States International Searching Authority; (2) explicitly require that corrections be in English and in compliance with PCT Rules 10 and 11; (3) provide that one "appropriate" addition or change of not more than five words per sheet may be stated in a letter; and (4) provide that amendments that do not comply with PCT Rules 10 and 11 may not be entered. PCT Rule 12 was amended to allow the Receiving Office to accept an international application in any language. In these instances, a translation may be required for the International Searching Authority, and any corrections are required to be submitted in both the language of the application and the language of the translation. 35 U.S.C. 361(c) reflects that the United States Receiving Office *only* accepts international applications in English and, in accordance with the agreement between the United States and the International Bureau, the United States International Searching and Examining

Authorities will *only* process international applications in English. Thus, any changes under § 1.471 must be in English. Section 1.471 is also clarified to reflect that PCT Rules 10 and 11 apply to any later submitted documents.

Section 1.480 is amended to clarify the rule to conform it to amended PCT Rule 59.3. Section 1.480 is amended to change "Demand and payment of the fees for international preliminary examination (§ 1.482)" to "proper Demand in an application for which the United States International Preliminary Examining Authority is competent and for which the fees for international preliminary examination (§ 1.482) have been paid." PCT Rule 59.3 was amended to allow a non-competent authority to forward a Demand either to the International Bureau or the competent international preliminary examining authority.

Section 1.480 is changed to clarify that the United States International Preliminary Examining Authority *only* conducts international preliminary examinations in international applications where the United States is the competent International Preliminary Examining Authority.

Section 1.481(a) is added to reflect the corresponding changes to PCT Rules 57 and 58, as well as the addition of PCT Rule 58bis. PCT Rule 57.3 sets the time limit for paying and the amount of the handling fee, and PCT Rule 58.1(b) provides that the provisions of PCT Rule 57.3 apply to the time limit for paying and the amount of the preliminary examination fee. Section 1.481(a) provides that the handling and preliminary examination fees shall be paid within the time period set in PCT Rule 57.3, and that the handling fee or preliminary examination fee payable is the handling fee or preliminary examination fee in effect on the date of receipt of the Demand in the United States International Preliminary Examining Authority. PCT Rule 58bis.1(c) was added to consider the handling fee and examination fee to have been received before the expiration of the time period set in PCT Rule 57.3 if the fees were submitted prior to the sending of an invitation to pay the fees. PCT Rule 58bis.1(a) was added to now allow the International Preliminary Examining Authority to collect a late payment fee, if the fees for preliminary examination are not paid prior to the sending of the invitation. PCT Rule 58bis.2 sets the amount of the late payment fee. Section 1.481(a) reflects changes to PCT Rule 58bis by providing that if the handling and preliminary fees are not paid within the time period set

in PCT Rule 57.3, applicants 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) fifty percent of the amount of the deficient fees, but not exceeding an amount equal to double the handling fee, or (2) an amount equal to the handling fee (PCT Rule 58bis.2). Section 1.481 also provides that the one-month time limit set in § 1.481(a) to pay deficient fees may not be extended.

Section 1.481(b) is added to reflect the addition of PCT Rule 58bis.1(d). Section 1.481(b) provides that if the payment needed to cover the handling and preliminary examination fees, pursuant to § 1.481(a), is not timely made in accordance with added PCT Rule 58bis.1(d), the United States International Preliminary Examining Authority will declare the Demand to be considered as if it had not been submitted. In this regard, where the Authority sends a notification that the Demand is considered not to have been made and applicant's payment is received, both on that same date, the fee is considered to be late and the notification remains effective. The fee must antedate the notice in order for the notice not to be effective.

Section 1.484(b) is amended to clarify the rule in conformance with amended PCT Rule 59.3. Section 1.484(b) is amended to: (1) Change "Demand" to "proper Demand in an application for which the United States International Preliminary Examining Authority is competent and for which the fees for international preliminary examination (§ 1.482) have been paid and"; and (2) eliminate the unassociated text following former paragraph (b)(3). PCT Rule 59.3 was amended to allow a non-competent receiving Office or international authority to forward a Demand either to the International Bureau or the competent International Preliminary Examining Authority. This change has the consequence of providing a safeguard for applicants who are filing a Demand at the end of nineteen months from the priority date and through error deposit the Demand with a receiving Office or an international authority that is not competent. Section 1.484(b) is changed to reflect that the United States International Preliminary Examining Authority only conducts international preliminary examination where the United States is the competent International Preliminary Examining Authority.

Section 1.485(a) is amended by adding that the replacement sheets must be "in compliance with PCT Rules 10 and 11." The amendment incorporates

the change to PCT Rule 11.14 which makes the formal requirements of PCT Rules 10 and 11 applicable to amendments during the international preliminary examination phase.

Sections 1.494(c) and 1.495(c) are amended to provide that a "Sequence Listing" need not be translated if the "Sequence Listing" complies with PCT Rule 12.1 and the description complies with PCT Rule 5.2(b).

Review Under the Paperwork Reduction Act of 1995

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This rule contains collections of information requirements subject to the PRA. The principal impact of this interim rule is to conform the United States rules of practice relating to applications filed under the PCT to the corresponding amendments made to the Regulations under the PCT.

The public reporting burden for these collections of information have been approved by the Office of Management and Budget (OMB) under OMB control number 0651-0021. The public reporting burden for this collection of information is estimated to average .954 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the information. Send comments regarding this burden estimate or any other aspect of the data requirements, including suggestions for reducing this burden, to Richard Lazarus at the address specified above or to the Office of Information and Regulatory Affairs of OMB, New Executive Office Bldg., 725 17th St. NW, rm. 10235, Washington, DC 20230, Attn: Desk Officer for the Patent and Trademark Office.

Other Considerations

The United States rules of practice contained in title 37, CFR, must conform to the PCT Articles and the Regulations annexed to the PCT. See PCT Article 27(1). This interim rule implements corresponding changes required to conform United States rules for international applications to the amendments to the PCT Regulations which become effective on July 1, 1998. Thus, this interim rule is covered by the foreign affairs function exception of 5 U.S.C. 553(a)(1), and may be adopted without prior notice and opportunity for

public comment. See *International Brotherhood of Teamsters v. Pena*, 17 F.3d 1478, 1486 (D.C. Cir. 1994).

In addition, the Commissioner of Patents and Trademarks, pursuant to authority at 5 U.S.C. 553(b)(B), finds good cause to adopt the changes made in this interim rule without prior notice and an opportunity for public comment, as such procedures are timing-wise infeasible. The PCT Regulations take effect on July 1, 1998. Delay in the promulgation of these interim rules to provide notice and public comment procedures would effectively preclude the required adoption in the United States of the PCT Regulations by their effective date of July 1, 1998. See *Petry v. Block*, 737 F.2d 1193, 1200-02 (D.C. Cir. 1984).

As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., are inapplicable.

This interim rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612 (October 26, 1987).

This interim rule has been determined not to be significant for purposes of Executive Order 12866 (September 30, 1993).

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, 37 CFR part 1 is 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 1.14 is amended by adding paragraph (g) to read as follows:

§ 1.14 Patent applications preserved in confidence.

* * * * *

(g) Copies of an application file for which the United States acted as the International Preliminary Examining Authority, or copies of a document in such an application file, will be furnished in accordance with Patent Cooperation Treaty (PCT) Rule 94.2 or 94.3, upon payment of the appropriate fee (§ 1.19(b)(2) or § 1.19(b)(3)).

3. Section 1.412 is amending by revised paragraph (c)(6) to read as follows:

§ 1.412 The United States Receiving Office.

* * * * *

(c) * * *

(6) Reviewing and, unless prescriptions concerning national security prevent the application from being so transmitted (PCT Rule 19.4), transmitting the international application to the International Bureau for processing in its capacity as a Receiving Office:

(i) Where the United States Receiving Office is not the competent Receiving Office under PCT Rule 19.1 or 19.2 and § 1.421(a); or

(ii) Where the international application is not in English but is in a language accepted under PCT Rule 12.1(a) by the International Bureau as a Receiving Office; or

(iii) Where there is agreement and authorization in accordance with PCT Rule 19.4(a)(iii).

4. Section 1.416 is amended by revising paragraph (c) to read as follows:

§ 1.416 The United States International Preliminary Examining Authority.

* * * * *

(c) The major functions of the International Preliminary Examining Authority include:

(1) Receiving and checking for defects in the Demand;

(2) Forwarding Demands in accordance with PCT Rule 59.3;

(3) Collecting the handling fee for the International Bureau and the preliminary examination fee for the United States International Preliminary Examining Authority;

(4) Informing applicant of receipt of the Demand;

(5) Considering the matter of unity of invention;

(6) Providing an international preliminary examination report which is a non-binding opinion on the questions of whether the claimed invention appears: to be novel, to involve an inventive step (to be nonobvious), and to be industrially applicable; and

(7) Transmitting the international preliminary examination report to applicant and the International Bureau.

5. A new § 1.419 is added before the undesignated center heading "Who May File an International Application" to read as follows:

§ 1.419 Display of currently valid control number under the Paperwork Reduction Act.

(a) Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501

et seq.), the collection of information in this subpart has been reviewed and approved by the Office of Management and Budget under control number 0651-0021.

(b) Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid Office of Management and Budget control number. This section constitutes the display required by 44 U.S.C. 3512(a) and 5 CFR 1320.5(b)(2)(i) for the collection of information under Office of Management and Budget control number 0651-0021 (see 5 CFR 1320.5(b)(2)(ii)(D)).

6. Section 1.431 is amended by revising paragraphs (c) and (d) to read as follows:

§ 1.431 International application requirements.

* * * * *

(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. The basic, transmittal, and search fee payable is the basic, transmittal, and search fee in effect on the receipt date of the international application.

(1) If the basic, transmittal and search fees are not paid within one month from the date of receipt of the international application and prior to the sending of a notice of deficiency, 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:

(i) Fifty percent of the amount of the deficient fees up to a maximum amount equal to the basic fee; or

(ii) An amount equal to the transmittal fee (PCT Rule 16bis).

(2) The one-month time limit set pursuant to this paragraph 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 in accordance with PCT Rule 16bis.1(e), the Receiving Office will declare the international application withdrawn under PCT Article 14(3)(a).

7. Section 1.432 is amended by revising its heading, paragraphs (b) and (c) and adding paragraph (d) to read as follows:

§ 1.432 Designation of States and payment of designation and confirmation fees.

* * * * *

(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. The late payment fee shall be equal to the greater of fifty percent 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.

(1) The one designation fee must be paid:

(i) Within one year from the priority date;

(ii) 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

(iii) With the late payment fee defined in this paragraph within the time set in the notification of the deficient designation fees or in accordance with PCT Rule 16bis.1(e).

(2) 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) The amount payable for the designation fee set forth in paragraph (b) is:

(1) The designation fee in effect on the filing date of the international application, if such fee is paid in full within one month from the date of receipt of the international application;

(2) The designation fee in effect on the date such fee is paid in full, if such fee is paid in full later than one month from the date of receipt of the international application but within one year from the priority date;

(3) The designation fee in effect on the date one year from the priority date, if the fee was due one year from the priority date, and such fee is paid in full later than one month from the date of receipt of the international application and later than one year from the priority date; or

(4) The designation fee in effect on the international filing date, if the fee was due one month from the international filing date and after one year from the priority date, and such fee is paid in full later than one month from the date of receipt of the international application and later than one year from the priority date.

(d) 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.

(1) Indication of other designations permitted by the Treaty 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:

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

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

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

(2) 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 any priority of designations, the allocation of the amount paid will be made in accordance with PCT Rule 16bis.1(c).

8. Section 1.435 is amended by revising paragraph (a) to read as follows:

§ 1.435 The description.

(a) The application must meet the requirements as to the content and form of the description set forth in PCT Rules 5, 9, 10, and 11 and sections 204 and 208 of the Administrative Instructions.

* * * * *

9. Section 1.445 is amended by revising paragraph (a) to read as follows:

§ 1.445 International application filing, processing and search fees.

(a) The following fees and charges for international applications are established by the Commissioner under the authority of 35 U.S.C. 376:

(1) A transmittal fee (see 35 U.S.C. 361(d) and PCT Rule 14)—\$240.00

(2) A search fee (see 35 U.S.C. 361(d) and PCT Rule 16):

(i) Where a corresponding prior United States National application filed under 35 U.S.C. 111(a) with the filing fee under § 1.16(a) has been filed—450.00

(ii) For all situations not provided for in paragraph (a)(2)(i) of this section—700.00

(3) A supplemental search fee when required, per additional invention—210.00

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

(5) A fee equivalent to the transmittal fee in paragraph (a)(1) of this section for transmittal of an international application to the International Bureau for processing in its capacity as a Receiving Office (PCT Rule 19.4).

* * * * *

10. Section 1.451 is amended by revising paragraph (a) and adding a paragraph (d) to read as follows:

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

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

* * * * *

(d) The applicant may correct or add a priority claim in accordance with PCT Rule 26bis.1.

11. Section 1.461 is amended by revising paragraph (a) to read as follows:

§ 1.461 Procedures for transmittal of record copy to the International Bureau.

(a) Transmittal of the record copy of the international application to the International Bureau shall be made by the United States Receiving Office or as provided by PCT Rule 19.4.

* * * * *

12. Section 1.465 is amended by revising paragraphs (b) and (c) to read as follows:

§ 1.465 Timing of application processing based on the priority date.

* * * * *

(b) When a claimed priority date is corrected or added under PCT Rule

26bis.1(a), or withdrawn under PCT Rule 90bis.3, or considered not to have been made under PCT Rule 26bis.2, the priority date for the purposes of computing any non-expired time limits will be the date of the earliest valid remaining priority claim of the international application, or if none, the international filing date.

(c) When corrections under PCT Art. 11(2), Art. 14(2) or PCT Rule 20.2(a) (i) or (iii) are timely submitted, and the date of receipt of such corrections falls later than one year from the claimed priority date or dates, the Receiving Office shall proceed under PCT Rule 26bis.2.

13. Section 1.471 is amended by revising paragraph (a) to read as follows:

§ 1.471 Corrections and amendments during international processing.

(a) Except as otherwise provided in this paragraph, all corrections submitted to the United States Receiving Office or United States International Searching Authority must be in English, in the form of replacement sheets in compliance with PCT Rules 10 and 11, and accompanied by a letter that draws attention to the differences between the replaced sheets and the replacement sheets. Replacement sheets are not required for the deletion of lines of text, the correction of simple typographical errors, and one addition or change of not more than five words per sheet. These changes may be stated in a letter and, if appropriate, the United States Receiving Office will make the deletion or transfer the correction to the international application, provided that such corrections do not adversely affect the clarity and direct reproducibility of the application (PCT Rule 26.4). Amendments that do not comply with PCT Rules 10 and 11.1 to 11.13 may not be entered.

* * * * *

14. Section 1.480 is amended by revising paragraph (a) to read as follows:

§ 1.480 Demand for international preliminary examination.

(a) On the filing of a proper Demand in an application for which the United States International Preliminary Examining Authority is competent and for which the fees have been paid, the international application shall be the subject of an international preliminary examination. The preliminary examination fee (§ 1.482(a)(1)) and the handling fee (§ 1.482(b)) shall be due at the time of filing the Demand.

* * * * *

15. Section 1.481 is added to read as follows:

§ 1.481 Payment of international preliminary examination fees.

(a) The handling and preliminary examination fees shall be paid within the time period set in PCT Rule 57.3. The handling fee or preliminary examination fee payable is the handling fee or preliminary examination fee in effect on the date of receipt of the Demand except under PCT Rule 59.3(a) where the fee payable is the fee in effect on the date of arrival of the Demand at the United States International Preliminary Examining Authority.

(1) If the handling and preliminary fees are not paid within the time period set in PCT Rule 57.3, 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:

(i) Fifty percent of the amount of the deficient fees, but not exceeding an amount equal to double the handling fee; or

(ii) An amount equal to the handling fee (PCT Rule 58bis.2).

(2) The one-month time limit set in this paragraph to pay deficient fees may not be extended.

(b) If the payment needed to cover the handling and preliminary examination fees, pursuant to paragraph (a) of this section, is not timely made in accordance with PCT Rule 58bis.1(d), the United States International Preliminary Examination Authority will declare the Demand to be considered as if it had not been submitted.

16. 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 proper Demand in an application for which the United States International Preliminary Examining Authority is competent, for which the fees for international preliminary examination (§ 1.482) have been paid, and 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 the 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.

(1) Examination will begin after the earliest of:

- (i) Receipt of the amendment;
- (ii) Receipt of applicant's statement that no amendment will be made; or
- (iii) Expiration of the time period set in the notification.

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

* * * * *

17. Section 1.485 is amended by revising paragraph (a) to read as follows:

§ 1.485 Amendment by applicant during international preliminary examination.

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

(1) Be made by submitting a replacement sheet in compliance with PCT Rules 10 and 11.1 to 11.13 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. Amendments that do not comply with PCT Rules 10 and 11.1 to 11.13 may not be entered.

* * * * *

18. Section 1.494 is amended by revising paragraph (c) to read as follows:

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

* * * * *

(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 "Sequence Listing" need not be translated if the "Sequence Listing" complies with PCT Rule 12.1(d) and the description complies with PCT Rule 5.2(b).

* * * * *

19. Section 1.495 is amended by revising paragraph (c) to read as follows:

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

* * * * *

(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 "Sequence Listing" need not be translated if the "Sequence Listing" complies with PCT Rule 12.1(d) and the description complies with PCT Rule 5.2(b).

* * * * *

Dated: May 22, 1998.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 98-14195 Filed 5-29-98; 8:45 am]

BILLING CODE 3510-16-P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No: 960828235-8109-02]

RIN: 0651-AA88

Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Disclosures

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office (PTO) is amending the rules for submitting nucleotide or amino acid sequences in computer readable form (CRF) for patent applications. These amendments simplify the requirements of the rules, rearrange portions of the rules for better understanding and establish consistent rules to permit a single internationally acceptable computer readable form. Sequence Listings will be presented in an international, language neutral format using numeric identifiers rather than the current subject headings. The Paper Sequence Listing will preferably be a separately numbered section of the patent application. Sequences which contain fewer than four specifically identified nucleotides or amino acids will no longer be required to be submitted in computer readable form.

DATES: *Effective date:* July 1, 1998. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 1, 1998.

Applicability date: Sections 1.821 through 1.825 as amended apply to applications filed on or after July 1, 1998, except for: (1) applications that claim the benefit of a prior application under 35 U.S.C. 120 filed before July 1, 1998, and which do not add subject matter involving a sequence listing subject to §§ 1.821 through 1.825; and (2) reissue applications in which the application for the patent sought to be reissued was filed before July 1, 1998. Sections 1.821 through 1.825 apply during a reexamination proceeding if the application for the patent sought to be reexamined was filed on or after July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Esther M. Kepplinger, by telephone at (703) 308-1495; by mail addressed to: Box Comments—Patents, Assistant Commissioner for Patents, Washington, DC 20231 marked to her attention; by facsimile to (703) 305-3935; or by electronic mail at esther.kepplinger@uspto.gov.

SUPPLEMENTARY INFORMATION: Sections 1.821 through 1.825 of title 37 provide a standardized format for the description of nucleotide and amino acid sequence data in patent applications and require the submission of such sequences in computer readable form (CRF). Sections 1.821 through 1.825 provide the following benefits to the PTO: (1) Improved search capabilities; (2) improved interference detection; (3) more efficient examination; (4) cost savings for the input of the sequence data; (5) more