

a statement that the translation of the certified copy is accurate that is signed by the individual who made the translation.

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(c) Unless such claim is accepted in accordance with the provisions of this paragraph, any claim for priority under 35 U.S.C. 119(a)–(d), 365(a)–(b) not presented within the time period provided by paragraph (a) of this section is considered to have been waived. If a claim for priority under 35 U.S.C. 119(a)–(d), 365(a)–(b) is presented after the time period provided by paragraph (a) of this section, the claim may be accepted if the claim identifying the prior foreign application by specifying its application number, country (or intellectual property authority), and the day, month, and year of its filing was unintentionally delayed. A petition to accept a delayed claim for priority under 35 U.S.C. 119(a)–(d), 365(a)–(b) must be accompanied by:

(1) The claim under 35 U.S.C. 119(a)–(d), or 365(a)–(b) and this section to the prior foreign application, unless previously submitted;

(2) The surcharge set forth in § 1.17(t); and

(3) A statement that the entire delay between the date the claim was due under paragraph (a)(1) of this section and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

14. A new § 1.57 is added to read as follows:

§ 1.57 Incorporation by reference.

(a) Subject to the conditions and requirements of this paragraph, if all or a portion of the specification or drawings is inadvertently omitted from an application, but the application contains a claim under § 1.55 for priority of a prior-filed foreign application, or a claim under § 1.78 for the benefit of a prior-filed provisional, nonprovisional, or international application, that was present on the date of receipt of the application, and the omitted portion of the specification or drawings is completely contained in the prior-filed application, the claim under §§ 1.55 or 1.78 shall also be considered an incorporation by reference of the prior-filed application.

(1) The application must be amended to include the omitted portion of the specification or drawings within the time period set by the Office, but in no case later than the close of prosecution as defined by § 1.114. The examiner may require the applicant to supply a copy of the prior-filed application, to

supply an English language translation of any prior-filed application that is in a language other than English, and to identify where the omitted portion of the specification or drawings can be found in the prior-filed application.

(2) Any amendment to an international application pursuant to this paragraph shall be effective only as to the United States. In addition, no request to add the missing part of the description or the missing drawing in an international application designating the United States will be acted upon by the Office prior to the expiration of the applicable time limit under PCT Article 22(1) or (2), or Article 39(a).

(3) If an application is not otherwise entitled to a filing date under § 1.53(b) or PCT Article 11, the amendment must be by way of a petition pursuant to this paragraph accompanied by the fee set forth in § 1.17(f).

(b) Except as provided in paragraph (a) of this section, an incorporation by reference must be identified by using the language “incorporated by reference” and must identify the referenced patent, application, or publication in the manner set forth in § 1.98(b)(1) through (b)(5).

(c) “Essential material” may be incorporated by reference, but only by way of an incorporation by reference to a U.S. patent or U.S. patent application publication, which patent or patent application publication does not itself incorporate such essential material by reference. “Essential material” is material that is necessary to:

(1) Provide a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and set forth the best mode contemplated by the inventor of carrying out the invention as required by the first paragraph of 35 U.S.C. 112;

(2) Describe the claimed invention in terms that particularly point out and distinctly claim the invention as required by the second paragraph of 35 U.S.C. 112; or

(3) Describe the structure, material, or acts that correspond to a means or step for performing a specified function as required by the sixth paragraph of 35 U.S.C. 112.

(d) Other material (“Nonessential material”) may be incorporated by reference to domestic or foreign patents or published applications, prior-filed commonly owned U.S. applications, or non-patent publications. An incorporation by reference by hyperlink

or other form of browser executable code is not permitted.

(e) The examiner may require the applicant to supply a copy of the material incorporated by reference. If the Office requires the applicant to supply a copy of material incorporated by reference, the material must be accompanied by a statement that the copy consists of the same material incorporated by reference in the referencing application.

(f) A purported incorporation of material by reference that does not comply with the requirements of paragraphs (b) though (e) of this section is not effective to incorporate such material by reference unless corrected by the applicant in a timely manner.

15. Section 1.58 is revised to read as follows:

§ 1.58 Chemical and mathematical formulae and tables.

(a) The specification, including the claims, may contain chemical and mathematical formulae, but shall not contain drawings or flow diagrams. The description portion of the specification may contain tables, if the tables are not also included in the drawings; claims may contain tables either if necessary to conform to 35 U.S.C. 112 or if otherwise found to be desirable.

(b) Tables that are submitted in electronic form (§§ 1.96(c) and 1.821(c)) must maintain the spatial relationships (e.g., alignment of columns and rows) of the table elements when displayed so as to visually preserve the relational information they convey. Chemical and mathematical formulae must be encoded to maintain the proper positioning of their characters when displayed in order to preserve their intended meaning.

(c) Chemical and mathematical formulae and tables must be presented in compliance with § 1.52(a) and (b), except that chemical and mathematical formulae or tables may be placed in a landscape orientation if they cannot be presented satisfactorily in a portrait orientation. Typewritten characters used in such formulae and tables must be chosen from a block (nonscript) type font or lettering style having capital letters which should be at least 0.422 cm. (0.166 inch) (e.g., preferably Arial, Times Roman, or Courier with a font size of 12) high, but may be no smaller than 0.21 cm. (0.08 inch) high (e.g., a font size of 6). A space at least 0.64 cm. (1/4 inch) high should be provided between complex formulae and tables and the text. Tables should have the lines and columns of data closely spaced to conserve space, consistent with a high degree of legibility.