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PO BOX 1022
MINNEAPOLIS MN 55440-1022

In re Patent No. 7,910,299
Issued: March 22, 2011
Application No. 11/538,348
Filed: October 3, 2006
Attorney Docket No. 09531-0103002 / Z02092

: LETTER REGARDING
: PATENT TERM ADJUSTMENT
: and
: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

This is a decision on the APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d) filed on May 20, 2011, requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted from 202 to 328 days.

The request for review of the patent term adjustment is **GRANTED** to the extent indicated herein.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of TWO HUNDRED ONE (201) days.

Patentees are given **THIRTY (30) DAYS or ONE (1) MONTH, whichever is longer,** from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

On March 22, 2011, the above-identified application matured into U.S. Patent No. 7,910,299 with a patent term adjustment of 202 days. On May 20, 2011, Patentees submitted the instant application. Patentees disclose that the patent term adjustment of 202 days indicated on the front of the patent is incorrect because Applicant Delay of 5 days for delay from February 14, 2010 to February 18, 2010 should have been accorded pursuant to 37 C.F.R. § 1.704(c)(10), rather than 4 days from February 14, 2010 to February 17, 2010, as indicated in the calculation. Patentee also maintains that the Office incorrectly calculated Office delay pursuant to 37 CFR 1.702(b). Patentee contends that the Office erred in subtracting from the "B delay" a period of time that was not "consumed by continued examination of the application." Specifically, Patentee argues that (after the filing of the request for continued examination) the Office mailed a Notice of Allowance on November 16, 2010, thereby closing examination of the application on that date. Thus, Patentee argues no continued examination took place during the 127 day period from November 16, 2010 (the mailing date of the Notice of

Allowance) until March 22, 2011 (the date the patent was issued). As such, Patentee maintains that the "B delay" should include the 127 days and be increased from 148 to 275 days. Patentee concludes that the correct patent term adjustment is 328 days (the sum of 302 days of "A delay" and 275 days of "B delay" minus 249 days of Applicant delay).

RELEVANT STATUTE AND REGULATIONS

37 CFR § 1.704(c)(10) provides that:

> Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:
> (i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper;
> or
> (ii) Four months;

The statutory basis for calculation of "B delay" is 35 U.S.C. 154(b)(1)(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, which provides that:

> Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including —
>
> (i) any time consumed by continued examination of the application requested by the applicant under section 132(b);
> (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or
> (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued.

The implementing regulation, 37 CFR 1.702(b) provides that:

> Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the

failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including:

(1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b);

(2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a);

(3) Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181;

(4) Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or

(5) Any delay in the processing of the application by the Office that was requested by the applicant.

OPINION

Patentees argues that an Amendment pursuant to 37 C.F.R. § 1.312 was filed on February 14, 2011, subsequent to the mailing of the Notice of Allowance and that the PTO mailed a response to the Amendment pursuant to 37 C.F.R. § 1.312 on February 18, 2011. Patentees were accorded a delay of 4 days for this post-allowance filing. In good faith and candor, Patentees submit that a total Applicant Delay of 5 days for delay from February 14, 2011, to February 18,2011 should have been accorded. See 37 C.F.R. § 1.704(c)(10). Applicant's arguments have been considered. The patent incorrectly shows a reduction of 4 days for applicants' filing of the Amendment pursuant to 37 C.F.R. § 1.312 after the mailing of the notice of allowance. Further, as stated by the patentees, the calculation used in the patent term determination is incorrect. The period from the date the Amendment pursuant to 37 C.F.R. § 1.312 was received to the date the response was mailed is 5 days, not 4 days.

The response to the Amendment pursuant to 37 C.F.R. § 1.312, filed February 14, 2011, was mailed February 18, 2011 not February 17, 2011. Pursuant to 37 CFR § 1.704(c)(10), a period of reduction of 5 days should have been accorded. Accordingly, the period of adjustment in the amount of 4 days is being removed and a period of 5 days will be entered.

As it relates to the calculation of "B delay, patentee's arguments have been considered, but not found persuasive. The Office calculated the period of "B delay" pursuant to 35 U.S.C. 154(b)(1)(B)(i) and 37 CFR 1.702(b)(1) as 148 days based on the application having been filed under 35 U.S.C. 111(a) on October 3, 2006 and the patent not having issued as of the day after the three year date, October 3, 2009, and a request for continued examination under 132(b) having been filed on March 1, 2010. In other words, the 127-day period beginning on the date of mailing of the notice of allowance to the date of issuance of the patent was considered time consumed by continued examination of an application under 35 U.S.C. 132(b) and was not included in the "B delay."

The Office's calculation of "B delay" is correct. The "B delay" is an adjustment entered if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed. However, the adjustment does not include, among other things, any time consumed by continued examination of the application at the request of the applicant under 35 U.S.C. 132(b)[1]. So, with respect to calculating the "B delay" where applicant has filed a request for continued examination, the period of adjustment is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the number of days in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

Further, counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentee does not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is not any time consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56366, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

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[1] Pursuant to 35 U.S.C. 132(b) , 37 CFR 1.114 provides for continued examination of an application, as follows:

(a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:

(1) Payment of the issue fee, unless a petition under § 1.313 is granted;

(2) Abandonment of the application; or

(3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

(b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

Patentee's argument that the period of time after the issuance of a notice of allowance on a request for continued examination is not "any time consumed by continued examination requested by the applicant under section 132(b)" within the meaning of 35 U.S.C. 154(b)(1)(B)(i) is not availing. This limitation is not supported by the statutory language. Garcia v. United States, 469 U.S. 70, 75 (1984) ("only the most extraordinary showing of contrary intentions from [legislative history] would justify a limitation on the 'plain meaning' of the statutory language"). BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning"). The statute provides for a guarantee of no more than 3-year application pendency, by providing for an adjustment in the patent term:

First, "Subject to the limitations of paragraph (2)," means that the limitations of paragraph 2 apply to this paragraph's adjustment of patent term. That is, the day-to-day extension of patent term for pendency beyond the 3 year period is restricted as follows: 1) "B delay" cannot accrue for days of "A delay" that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

Second, "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of the United States) after the application filing date before an adjustment will accrue for "B delay."

Third, "not including- (i) any time consumed by continued examination of the application requested by the applicant under section 132(b); (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), meaning that the three-year period does not include "any time consumed by" or "any delay in processing," as specified in clauses (i)-(iii). This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, 580 F.Supp.2d 138, 88 U.S.P.Q.2d 1538 (D.D.C., September 30, 2008), because the clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate this effect, the statute, *inter alia*, grants adjustments of patent term whenever the patent prosecution takes more than three years, regardless of the reason. The time consumed by prosecution of the application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. The time it takes to prosecute the application ends not with the mailing of the notice of allowance, but with the issuance of the patent.

Thus, not including "any time consumed by" means not including any days used to prosecute the application as specified in clauses (i)-(ii)[2]. Clause (i) specifies "any time consumed by continued examination of the application requested by the applicant under section 132(b)." Clause (ii) specifies "any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court." "Time" in the context of this legislation throughout refers to days. "Consumed by" means used by or used in the course of. *Websters Collegiate Dictionary*, (11th ed.). The "any" signifies that the days consumed by are "any" of the days in the pendency of the application, and not just days that occur after the application has been pending for 3 years. As such, "any time consumed by" refers to any days used in the course of 1) continued examination of the application under section 132(b)(the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, and 4) appellate review. Thus, that 3-year period given to the Office to issue a patent before an adjustment will accrue for "B delay" does not include any days used in the course of or any time consumed by clauses (i)-(ii), including any time consumed by the filing of a request for continued examination.

Fourth, "the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued" meaning that the consequence of this failure is that after "the end of that 3-year period" an additional 1 day of patent term

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[2] Clause (iii) provides for not including (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued. It is noted that paragraph (3)(C) allows with an adequate showing by applicant for reinstatement of no more than 3 months of the patent term reduced for applicant delay in taking in excess of three months to respond.

will accrue for each day that the application is pending until the day the patent is issued.

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the law. See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in Blacklight Power, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of

allowance under 35 U.S.C. 151. See BlackLight Power, Inc. v. Rogan, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously been issued for the application. See In re Drawbaugh, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures[3] permit the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See 37 CFR 1.114(a)(1).

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the notice of allowance. All the time the application is pending from the date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that request. Applicant has gotten further prosecution of the application without having to file a continuing application under 37 CFR 1.53(b).

All of the continued examination pursuant to the filing of the request by the applicant is properly excluded from the delay attributed to the Office. 35 U.S.C. 154(b)(1)(B)'s guarantee of a total application pendency of no more than three years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

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[3] Thus, on occasion, even where a request for continued examination has already been filed and a notice of allowance issued pursuant to that request, applicant may file a further request for continued examination.

In this instance, the request for continued examination was filed on March 1, 2010 and the patent issued by virtue of those requests on March 22, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on March 1, 2010 and ending on March 22, 2011 is not included in calculating Office delay.

CONCLUSION

In view of the above, the patent should have issued with a patent term adjustment of two hundred one (201) days.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **ninety-one (91)** days.

Telephone inquiries specific to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,910,299 B2

DATED : March 22, 2011

INVENTOR(S) : Timothy W. Behrens

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (202) days

Delete the phrase "by 202 days" and insert – by 201 days--

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OFFICE OF PETITIONS

In re Patent No. 7,910,299 :
Issued: March 22, 2011 : DECISION ON REQUEST FOR
Application No. 11/538,348 : RECONSIDERATION OF
Filed: October 3, 2006 : PATENT TERM ADJUSTMENT
Attorney Docket No. 09531-0103002 / Z02092 :

This is a decision on the request for reconsideration filed August 1, 2011, pursuant to 37 CFR §1.705(d), requesting that the patent term adjustment indicated on the above-identified patent be corrected from 201 days to 328 days.

This petition is hereby **DENIED**. This decision is a final agency action within the meaning of 5 U.S.C. § 704 for purposes of seeking judicial review. *See,* MPEP 1002.02.

The patent term adjustment indicated in the previous decision mailed July 1, 2011 is properly indicated.

Patentee maintains that the Office incorrectly calculated Office delay pursuant to 37 CFR 1.702(b). Patentee contends that the Office erred in subtracting from the "B delay" a period of time that was not "consumed by continued examination of the application." Specifically, Patentee argues that (after the filing of the request for continued examination) the Office mailed a Notice of Allowance on November 16, 2010, thereby closing examination of the application on that date. Thus, Patentee argues no continued examination took place during the 127 day period from November 16, 2010 (the mailing date of the Notice of Allowance) until March 22, 2011 (the date the patent was issued). As such, Patentee maintains that the "B delay" should include the 127 days and be increased from 201 to 328 days.

RELEVANT STATUTE AND REGULATIONS

The statutory basis for calculation of "B delay" is 35 U.S.C. 154(b)(1)(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, which provides that:

> Subject to the limitations under paragraph (2), if the issue of an original patent is

delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including —

(i) any time consumed by continued examination of the application requested by the applicant under section 132(b);

(ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or

(iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued.

The implementing regulation, 37 CFR 1.702(b) provides that:

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including:

(1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b);

(2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a);

(3) Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181;

(4) Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or

(5) Any delay in the processing of the application by the Office that was requested by the applicant.

OPINION

Applicant's arguments have been considered.

The Office calculated the period of "B delay" pursuant to 35 U.S.C. 154(b)(1)(B)(i) and 37 CFR 1.702(b)(1) as 148 days based on the application having been filed under 35 U.S.C. 111(a) on October 3, 2006 and the patent not having issued as of the day after the three year date, October 3, 2009, and a request for continued examination under 132(b) having been filed on March 1, 2010. In other words, the 127-day period beginning on the date of mailing of the notice of allowance to the date of issuance of the patent was considered time consumed by continued examination of an application under 35 U.S.C. 132(b) and was not included in the "B delay."

The Office's calculation of "B delay" is correct. The "B delay" is an adjustment entered if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed. However, the adjustment does not include, among other things, any time consumed by continued examination of the application at the request of the applicant under 35 U.S.C. 132(b)[1]. So, with respect to calculating the "B delay" where applicant has filed a request for continued examination, the period of adjustment is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the number of days in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

Further, counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentee does not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is not any time consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56366, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

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[1] Pursuant to 35 U.S.C. 132(b) , 37 CFR 1.114 provides for continued examination of an application, as follows:

(a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:

(1) Payment of the issue fee, unless a petition under § 1.313 is granted;

(2) Abandonment of the application; or

(3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

(b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

Patentee's argument that the period of time after the issuance of a notice of allowance on a request for continued examination is not "any time consumed by continued examination requested by the applicant under section 132(b)" within the meaning of 35 U.S.C. 154(b)(1)(B)(i) is not availing. This limitation is not supported by the statutory language. Garcia v. United States, 469 U.S. 70, 75 (1984) ("only the most extraordinary showing of contrary intentions from [legislative history] would justify a limitation on the 'plain meaning' of the statutory language"). BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning"). The statute provides for a guarantee of no more than 3-year application pendency, by providing for an adjustment in the patent term:

First, "Subject to the limitations of paragraph (2)," means that the limitations of paragraph 2 apply to this paragraph's adjustment of patent term. That is, the day-to-day extension of patent term for pendency beyond the 3 year period is restricted as follows: 1) "B delay" cannot accrue for days of "A delay" that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

Second, "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of the United States) after the application filing date before an adjustment will accrue for "B delay."

Third, "not including- (i) any time consumed by continued examination of the application requested by the applicant under section 132(b); (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), meaning that the three-year period does not include "any time consumed by" or "any delay in processing," as specified in clauses (i)-(iii). This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, 580 F.Supp.2d 138, 88 U.S.P.Q.2d 1538 (D.D.C., September 30, 2008), because the clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate this effect, the statute, *inter alia*, grants adjustments of patent term whenever the patent prosecution takes more than three years, regardless of the reason. The time consumed by prosecution of the application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. The time it takes to prosecute the application ends not with the mailing of the notice of allowance, but with the issuance of the patent.

Thus, not including "any time consumed by" means not including any days used to prosecute the application as specified in clauses (i)-(ii)[2]. Clause (i) specifies "any time consumed by continued examination of the application requested by the applicant under section 132(b)." Clause (ii) specifies "any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court." "Time" in the context of this legislation throughout refers to days. "Consumed by" means used by or used in the course of. *Websters Collegiate Dictionary*, (11th ed.). The "any" signifies that the days consumed by are "any" of the days in the pendency of the application, and not just days that occur after the application has been pending for 3 years. As such, "any time consumed by" refers to any days used in the course of 1) continued examination of the application under section 132(b)(the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, and 4) appellate review. Thus, that 3-year period given to the Office to issue a patent before an adjustment will accrue for "B delay" does not include any days used in the course of or any time consumed by clauses (i)-(ii), including any time consumed by the filing of a request for continued examination.

Fourth, "the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued" meaning that the consequence of this failure is that after "the end of that 3-year period" an additional 1 day of patent term

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[2] Clause (iii) provides for not including (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued. It is noted that paragraph (3)(C) allows with an adequate showing by applicant for reinstatement of no more than 3 months of the patent term reduced for applicant delay in taking in excess of three months to respond.

will accrue for each day that the application is pending until the day the patent is issued.

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the law. See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in Blacklight Power, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of

allowance under 35 U.S.C. 151. See BlackLight Power, Inc. v. Rogan, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously been issued for the application. See In re Drawbaugh, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures[3] permit the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See 37 CFR 1.114(a)(1).

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the notice of allowance. All the time the application is pending from the date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that request. Applicant has gotten further prosecution of the application without having to file a continuing application under 37 CFR 1.53(b).

All of the continued examination pursuant to the filing of the request by the applicant is properly excluded from the delay attributed to the Office. 35 U.S.C. 154(b)(1)(B)'s guarantee of a total application pendency of no more than three years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

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[3] Thus, on occasion, even where a request for continued examination has already been filed and a notice of allowance issued pursuant to that request, applicant may file a further request for continued examination.

In this instance, the request for continued examination was filed on March 1, 2010 and the patent issued by virtue of those requests on March 22, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on March 1, 2010 and ending on March 22, 2011 is not included in calculating Office delay.

CONCLUSION

Accordingly, the decision on application for patent term adjustment has been reconsidered and the request for additional patent term is DENIED.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212.

Anthony Knight
Director
Office of Petitions

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Alexandria, VA 22313-1450
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Wong, Cabello, Lutch, Rutherford & Brucculeri, LLP
20333 SH 249 6th Floor
Houston, TX 77070

MAILED

JUN 06 2011

OFFICE OF PETITIONS

In re Application of :
Doug Mueller et al. :
Application No. 11/538,377 : DECISION ON PETITION
Filed: October 3, 2006 : TO WITHDRAW
Attorney Docket No. 06-008-US-(149-0182US) : FROM RECORD
:

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed May 16, 2011.

The request is **moot because a revocation of power of attorney has been filed.**

A review of the file record indicates that the power of attorney to Wong, Cabello, Lutch, Rutherford & Brucculeri, LLP, has been revoked by the assignee of the patent application on June 2, 2011. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

All future communications from the Office will continue to be directed to the below-listed address until otherwise notified by applicant.

Telephone inquires concerning this decision should be directed to Kimberly Inabinet at 571-272-4618.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

cc: Brake, Hughes, Bellermann, LLP
c/o CPA Global
P.O. Box 52050
Minneapolis, MN 55402

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/538,377	10/03/2006	Doug Mueller	149-0182US

CONFIRMATION NO. 1894

POWER OF ATTORNEY NOTICE

29855
WONG, CABELLO, LUTSCH, RUTHERFORD & BRUCCULERI, L.L.P.
20333 SH 249 6th Floor
HOUSTON, TX 77070

OC000000048039876

Date Mailed: 06/06/2011

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 06/02/2011.

- The Power of Attorney to you in this application has been revoked by the assignee who has intervened as provided by 37 CFR 3.71. Future correspondence will be mailed to the new address of record(37 CFR 1.33).

/kainabinet/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

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JUN 20 2011

OFFICE OF PETITIONS

Wong, Cabello, Lutch, Rutherford & Brucculeri, LLP
20333 SH 249 6th Floor
Houston, TX 77070

In re Application of	:	
Doug Mueller et al.	:	
Application No. 11/538,393	:	DECISION ON PETITION
Filed: October 3, 2006	:	TO WITHDRAW
Attorney Docket No. 0081-142001	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed May 16, 2011.

The request is **moot because a revocation of power of attorney has been filed.**

A review of the file record indicates that the power of attorney to Wong, Cabello, Lutch, Rutherford & Brucculeri, LLP, has been revoked by the assignee of the patent application on June 2, 2011. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

All future communications from the Office will continue to be directed to the below-listed address until otherwise notified by applicant.

Telephone inquires concerning this decision should be directed to Kimberly Inabinet at 571-272-4618.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

cc: Brake, Hughes, Bellermann, LLP
c/o CPA Global
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Minneapolis, MN 55402

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HAYNES AND BOONE, LLP
IP Section
2323 Victory Avenue
Suite 700
Dallas TX 75219

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JAN 03 2011

OFFICE OF PETITIONS

In re Application of	:	
Paul T. Artman, et al.	:	
Application No. 11/538,460	:	DECISION ON PETITION
Filed: October 4, 2006	:	
Attorney Docket No. 16356.1020 (DC-11274)	:	

This is a decision on the petition, filed October 5, 2010, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision should be filed within two (2) months from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment."

This application was held abandoned for failure to reply to the Notification of Non-Compliant Appeal Brief mailed December 22, 2009, which set a one (1) month shortened statutory period for reply. A Notice of Abandonment was mailed on September 3, 2010.

Petitioner asserts that the Notification dated December 22, 2009 was not received.

A review of the written record indicates no irregularity in the mailing of the Office action, and, in the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received.

The showing required to establish nonreceipt of an Office communication must include:

(1) a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.

(2) Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received.

(3) A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required. A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question. See MPEP §711.03(c)(I)(A).

See MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).

The petition fails to satisfy item 3 of the above-stated requirements.

Accordingly, absent the required evidence to establish nonreceipt of the Notification of December 22, 2009, the petition requesting withdrawal of the holding of abandonment cannot be granted at this time.

If petitioner cannot supply the evidence necessary to withdraw the holding of abandonment, or simply does not wish to, petitioner should consider filing a petition under 37 CFR 1.137(b) stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the $1,620 petition fee.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the date it was discovered that the application was abandoned until the filing of the petition to revive under 37

CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By facsimile: **(571) 273-8300**
Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to Terri Johnson at (571) 272-2991.

/Ramesh Krishnamurthy/
Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

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HAYNES AND BOONE, LLP
IP Section
2323 Victory Avenue
Suite 700
Dallas TX 75219

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APR 18 2011

OFFICE OF PETITIONS

In re Application of :
Paul T. Artman, et al. :
Application No. 11/538,460 : DECISION ON PETITION
Filed: October 4, 2006 :
Attorney Docket No. 16356.1020 (DC-11274) :

This is a decision on the renewed petition, filed March 2, 2011, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to reply to the Notice of Non-Compliant Appeal Brief mailed December 22, 2009, which set a one (1) month shortened statutory period for reply. A Notice of Abandonment was mailed on September 3, 2010.

Petitioner asserts that the Notice action dated December 22, 2009 was not received.

A review of the written record indicates no irregularity in the mailing of the Office action, and, in the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received.

The showing required to establish nonreceipt of an Office communication must include:

(1) a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.

(2) Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received.

(3) A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required. A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question. See MPEP §711.03(c)(I)(A).

The petition satisfies the above-stated requirements. Accordingly, the application was not abandoned in fact.

In view of the above, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

This application is being referred to the Technology Center technical support staff of Art Unit 2863 for appropriate action on the Request for Continued Examination (RCE) and Amendment filed on October 5, 2010.

/Ramesh Krishnamurthy/
Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

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FLORHAM PARK NJ 07932

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DEC 17 2010

OFFICE OF PETITIONS

In re Application of :
Zimmermann :
Application No. 11/538,484 : ON PETITION
Filed: October 4, 2006 :
Attorney Docket No. 4980A :

This is a decision on the petition to revive under 37 CFR 1.137(b), filed November 9, 2010.

The petition under 37 CFR 1.137(b) is **GRANTED**.

The above-identified application became abandoned for failure to timely file a reply in response to the non-final Office action, mailed January 25, 2010. This Office action set a shortened statutory period for reply of three (3) months. No reply having been received, the application became abandoned on April 26, 2010. The Office mailed a Notice of Abandonment on August 23, 2010.

With the instant petition, applicants made the proper statement of unintentional delay, paid the petition fee, and filed the required reply in the form of an Amendment.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

The application is being forwarded to Group Art Unit 1617 for consideration of the Amendment, filed November 9, 2010.

Telephone inquiries related to this decision should be directed to the undersigned at (571)272-3207.

Cliff Congo
Petitions Attorney
Office of Petitions

cc: Frenkel & Associates
3975 University Drive
Suite 330
Fairfax, Virginia 22030

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AUG 01 2011

OFFICE OF PETITIONS

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FLORHAM PARK NJ 07932

In re Application of :
Curtis J. Zimmermann :
Application No. 11/538,484 : DECISION ON PETITION
Filed: October 4, 2006 :
Attorney Docket No. 4980A :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 13, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the final Office action mailed, December 30, 2010, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on March 31, 2011. A Notice of Abandonment was mailed July 8, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $810.00 and the submission required by 37 CFR 1.114; (2) the petition fee of $1,620.00; and (3) a proper statement of unintentional delay.

The address given on the petition differs from the address of record. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

This matter is being referred to Technology Center AU 1617 for processing of the Request for Continued Examination under 37 CFR 1.114 and the Amendment filed with the instant petition.

/Joan Olszewski/
Joan Olszewski
Petitions Examiner
Office of Petitions

cc: Stuart Frenkel
3975 University Drive, Suite 330
Fairfax, Virginia 22030

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SUITE 383
CITY OF INDUSTRY CA 91748

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SEP 01 2011

OFFICE OF PETITIONS

In re Application of	:	
Ng et al.	:	DECISION
Application No. 11/538562	:	ON PETITION
Filing or 371(c) Date: 10/04/2006	:	
Attorney Docket Number:	:	
62598.10	:	

This is a decision on the Petition to Revive an Unintentionally Abandoned Application Under 37 C.F.R. § 1.137(b), filed April 12, 2011.

This Petition is hereby **granted**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of August 27, 2010. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is November 28, 2010.

Applicant files the present petition, Notice of Appeal and fee. The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of a Notice of Appeal and fee; (2) the petition fee; and (3) the required statement of unintentional delay. Accordingly, the reply is accepted as having been unintentionally delayed.

Accordingly, the petition is granted. The application is being referred to Technology Center Art Unit 1616 to await the brief in support of appeal.

Applicant has two (2) months from the mailing date of this Decision to file an appeal brief. Extensions of time are available under 37 CFR 1.136(a). Accord, MPEP 1215.01

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

STAAS & HALSEY LLP
SUITE 700
1201 NEW YORK AVENUE, N.W.
WASHINGTON DC 20005

MAILED

JAN 10 2011

OFFICE OF PETITIONS

In re Application of
Toshikazu Houmura et al
Application No. 11/538,643
Filed: October 4, 2006
Attorney Docket No. 1720.1011C

DECISION GRANTING PETITION
UNDER 37 CFR 1.313(c)(2)

This is a decision on the petition under 37 CFR 1.313(c)(2), filed January 7, 2011, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). *See* 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on September 13, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (571) 272-3208.

This application is being referred to Technology Center AU 2614 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the IDS filed December 30, 2010.

/Karen Creasy/
Karen Creasy
Petitions Examiner
Office of Petitions

[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B - Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.*

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STAAS & HALSEY LLP
SUITE 700
1201 NEW YORK AVENUE, N.W.
WASHINGTON DC 20005

MAILED

JAN 10 2011

OFFICE OF PETITIONS

In re Application of
Toshikazu Houmura, et al.
Application No. 11/538,668
Filed: October 4, 2006
Attorney Docket No. 1720.1011C2

: DECISION GRANTING PETITION
: UNDER 37 CFR 1.313(c)(2)

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, January 7, 2011 to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). *See* 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on November 15, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to Terri Johnson at (571) 272-2991.

This application is being referred to Technology Center AU 2614 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.*

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MAILED

AUG 09 2010

OFFICE OF PETITIONS

WILSON, SONSINI, GOODRICH &
ROSATI
650 PAGE MILL ROAD
PALO ALTO CA 94304-1050

In re Application of :
Abrams, et al. :
Application No. 11/538,782 : DECISION ON APPLICATION
Filed: October 4, 2006 : FOR PATENT TERM ADJUSTMENT
Attorney Docket No. 29511-722.201 :

This is in response to the "Request for Reconsideration of the Patent Term Adjustment and Application for Patent Term Adjustment under 37 CFR 1.705" filed March 24, 2010, which will be treated as a petition under 37 CFR 1.705(b). Applicants requests that the initial Determination of Patent Term Adjustment under 35 U.S.C. 154(b) be reviewed for accuracy.

The application for patent term adjustment is **GRANTED.**

The Office has updated the PALM and PAIR screens to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is one hundred and fifteen (115) days. A copy of the updated PALM screen, showing the correct determination, is enclosed.

On January 29, 2010, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment is 187 days. On March 24, 2010, applicant submitted the instant petition. Applicant maintains that the patent term adjustment indicated on the Determination of Patent Term Adjustment is incorrect and that the patent term adjustment at should be reduced by an additional 72 days.

Applicants' argument has been considered and is well taken. On November 20, 2009, and on January 20, 2010, applicants submitted a supplemental replies or paper in the form of an Information Disclosure Statements (IDS) after filing a reply to the non-

final Office action on November 9, 2009. The record does not support a conclusion that the examiner expressly requested the filing of either IDS. Further, a review of the IDS, filed November 20, 2009 and January 20, 2010, reveals that applicant did not include statements under 37 CFR 1.704(d).[1] Thus, applicant failed to engage in reasonable efforts to conclude prosecution of the application. Accordingly, the period of adjustment should have been reduced by 72 days pursuant to 37 CFR 1.704(c)(8), counting the number of days beginning on the day after the date the initial reply was filed, November 10, 2009, and ending on the date that the second IDS was filed, January 20, 2010. It is noted that the period of reduction to the patent term adjustment for the filing of the IDS on November 20, 2009, is 11 days, however, this period of reduction overlaps with the 72 period of reduction for the IDS filed January 20, 2010. Thus, only the greater period of 72 days will be entered.

Accordingly, a period of reduction of 72 days is being entered. In view thereof, the determination of the patent term adjustment at the time of the mailing of the notice of allowance is 115 days.

Deposit account 23-2415 will be charged $200.00 for the fee set forth under 37 CFR 1.18(e).

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

---

[1] Pursuant to 37 CFR § 1.704(d):

> A paper containing only an information disclosure statement in compliance with §§ 1.97 and 1.98 will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraphs (c)(6), (c)(8), (c)(9), or (c)(10) of this section if it is accompanied by a statement that each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement. This thirty-day period is not extendable.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PALM screen

PALM INTRANET

Day : Tuesday
Date: 8/3/2010
Time: 13:30:47

PTA Calculations for Application: 11/538782

Application Filing Date:	10/04/2006	PTO Delay (PTO):	290
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	103
Post-Issue Petitions:	0	Total PTA (days):	115
PTO Delay Adjustment:	-72		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
77	08/03/2010	ADJUSTMENT OF PTA CALCULATION BY PTO		72	
59	01/29/2010	MAIL NOTICE OF ALLOWANCE			
58	01/28/2010	ISSUE REVISION COMPLETED			
57	01/28/2010	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
56	01/20/2010	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
55	01/22/2010	ALLOWED CASE RETURNED TO THE EXAMINER FOR CLERICAL PROCESSING			
54	01/22/2010	DOCUMENT VERIFICATION			
53	01/20/2010	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
52	01/14/2010	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
51	01/19/2010	EXAMINER'S AMENDMENT COMMUNICATION			
50	01/19/2010	NOTICE OF ALLOWABILITY			
47	11/20/2009	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
46	11/20/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
45	11/16/2009	DATE FORWARDED TO EXAMINER			
44	11/09/2009	RESPONSE AFTER NON-FINAL ACTION		33	42
43	11/09/2009	REQUEST FOR EXTENSION OF TIME - GRANTED			
42	07/07/2009	MAIL NON-FINAL REJECTION			
41	07/06/2009	NON-FINAL REJECTION			
34	05/01/2009	DATE FORWARDED TO EXAMINER			
33	04/28/2009	RESPONSE TO ELECTION / RESTRICTION FILED			
32	04/10/2009	MAIL RESTRICTION REQUIREMENT			
31	04/10/2009	REQUIREMENT FOR RESTRICTION / ELECTION			
26	02/05/2009	DATE FORWARDED TO EXAMINER			
25	01/28/2009	RESPONSE AFTER NON-FINAL ACTION		40	23
24	01/28/2009	REQUEST FOR EXTENSION OF TIME - GRANTED			
23	09/19/2008	MAIL NON-FINAL REJECTION	290		-1
22	09/15/2008	NON-FINAL REJECTION			
16	05/22/2008	CASE DOCKETED TO EXAMINER IN GAU			
15	05/22/2008	CASE DOCKETED TO EXAMINER IN GAU			
14	05/22/2008	DISPATCH FROM OIPE TO CORPS - U-P-R-D APPLICATION			
12	11/17/2007	CASE DOCKETED TO EXAMINER IN GAU			
11	08/23/2007	PG-PUB ISSUE NOTIFICATION			
10	05/15/2007	SENT TO CLASSIFICATION CONTRACTOR			
9	05/15/2007	APPLICATION IS NOW COMPLETE			
8	05/08/2007	ADDITIONAL APPLICATION FILING FEES		30	5
7	05/08/2007	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
6	05/08/2007	APPLICANT HAS SUBMITTED NEW DRAWINGS TO CORRECT CORRECTED PAPERS PROBLEMS			
5	01/08/2007	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
3	12/23/2006	CLEARED BY OIPE CSR			
2	12/18/2006	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	10/04/2006	INITIAL EXAM TEAM NN			

Search Another: Application# [ ] Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY AND POPEO, P.C.
ONE FINANCIAL CENTER
BOSTON MA 02111

MAILED

MAR 28 2011

OFFICE OF PETITIONS

In re Patent No. 7,757,830 :
Issue Date: July 20, 2010 :
Application No. 11/538,826 : DECISION ON PETITION
Filed: October 5, 2006 :
Attorney Docket No. 34106-509 :

This is a decision on the petition filed January 3, 2011, under 37 CFR 1.182, requesting issuance of a duplicate Letters Patent for the above-identified patent.

The petition is **GRANTED**.

The Publishing Division is directed to issue a duplicate Letters Patent.

Petition paid a fee of $130, however, since the proper fee for a petition under CFR 1.182 is $400, an additional $270 will be charged to Deposit Account No. 50-0311, as authorized.

Telephone inquiries concerning this decision may be directed to Diane C. Goodwyn at (571) 272-6735.

Inquiries regarding the issuance of a duplicate Letters Patent may be directed to Ollie Person at (703) 756-1555 in the Office of Data Management.

A copy of this decision is being sent to the Office of Data Management for issuance of a duplicate Letters Patent.

Thurman K. Page
Petitions Examiner
Office of Petitions

cc: Ollie Person, Randolph Square, 9th Floor, Room D30-A (Fax No. (571) 270-9764)
Kimberly Terrell, Randolph Square, 9th Floor, Room D33 (Fax No. (571) 270-9958)

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EDWARD LANGER
c/o SHIBOLETH YISRAELI ROBERTS
ZISMAN & CO.
1 PENN PLAZA-SUITE 2527
NEW YORK NY 10119

MAILED

DEC 20 2010

OFFICE OF PETITIONS

In re Application of :
Muhammad Abdulrazik :
Application No. 11/538,836 : DECISION ON PETITION
Filed: October 5, 2006 : TO WITHDRAW
Attorney Docket No. 2122 : FROM RECORD
:

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed December 8, 2010.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a).

The request was signed by Edward Langer on behalf of all attorneys/agents associated with customer number 62433. All attorneys/agents associated with customer number 62433 have been withdrawn.

The correspondence address has been changed and is copied below.

Telephone inquiries concerning this decision should be directed to Kimberly Inabinet at 571-272-4618.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

cc: Muhammad Abdulrazik
P.O. Box 31821
Jerusalem, Israel 91317

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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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Alexandria, Virginia 22313-1450
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/538,836	10/05/2006	Muhammad ABDULRAZIK	2122

CONFIRMATION NO. 2669

POWER OF ATTORNEY NOTICE

62433
EDWARD LANGER
c/o SHIBOLETH YISRAELI ROBERTS ZISMAN & CO.
1 PENN PLAZA-SUITE 2527
NEW YORK, NY 10119

Date Mailed: 12/20/2010

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 12/08/2010.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

/kainabinet/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/538,870	10/05/2006	Edward Fimbel III	FIM001	2731

54698 7590 02/17/2012

MOSER TABOADA
1030 BROAD STREET
SUITE 203
SHREWSBURY, NJ 07702

EXAMINER	
A, PHI DIEU TRAN	

ART UNIT	PAPER NUMBER
3633	

MAIL DATE	DELIVERY MODE
02/17/2012	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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FEB 17 2012

MOSER TABOADA
1030 BROAD STREET
SUITE 203
SHREWSBURY NJ 07702

In re Application of	:	
EDWARD FIMBEL III	:	DECISION ON PETITION
Application No. 11/538,870	:	UNDER 37 CFR §1.181
Filed: October 5, 2006	:	
For: CARVED SOLID FACE DOOR AND METHOD OF FABRICATION	:	

This is a decision on applicant's petition under 37 CFR 1.181 filed December 12, 2011 requesting withdrawal of the finality of the Office action mailed December 5, 2011.

The petition is **GRANTED.**

The record reflects that on November 3, 2010 responding to a first request for continued examination (RCE) dated September 28, 2010 a non-final Office action was mailed rejecting claims 1, 3-15, 26 and 28-37 on various grounds of rejection. On February 3, 2011 applicant filed a response amending claims 9, and 33, and adding new claim 38. On May 24, 2011 a final Office action was mailed rejecting claims 1, 3-15, 26 and 28-38 on various grounds of prior art rejection. On September 26, 2011 applicant filed an amendment after final with arguments and a declaration under 37 CFR 1.132 of Edward Fimbel III to traverse the examiner's holding the term "carved" as a product-by-process limitation. On October 17, 2011 an advisory action was mailed in which the examiner indicated that the declaration of Edward Fimbel was not entered because applicant failed to provide a showing of good and sufficient reasons why the declaration is necessary and was not earlier presented as specified in 37 CFR 1.116(e). Subsequently, on October 24, 2011 applicant filed a second request for continued examination (RCE). A final Office action was mailed on December 5, 2011. Applicant timely filed the instant petition on December 12, 2011 to withdraw the finality of the December 5, 2011 Office action.

In the petition, applicant argues that the finality of the Office action is premature because the examiner failed to comply with MPEP 706.07(b) with respect to the declaration by Edward Fimbel. Applicant contends that the declaration is material presented in the earlier application after final rejection that was denied entry, and the declaration raised new issues that required further consideration.

MPEP 706.07 (b) states that "it would not be proper to make final a first Office action in a continuing or substitute application or an RCE where that application contains material which was presented in the earlier application after final rejection or closing of prosecution but was denied entry because (A) new issues were raised that required further consideration and/or search, or (B) the issue of new matter was raised."

Applicant's argument is persuasive. The declaration by Edward Fimbel qualified as "material" that raises new issues that would require further consideration as cited in MPEP 706.07(b). Since the Fimbel declaration was presented in the earlier application after final rejection but was denied entry, it is agreed that the Office action following the filing of a RCE in this application cannot properly make final. The finality of the December 5, 2011 action is hereby withdrawn. The period for response continues to run from the December 5, 2011 mailing date of the Office action.

Any questions concerning this petition should be directed to Quality Assurance Specialist Lanna Mai at 571-272-6867.

Katherine Matecki

Kathy Matecki, Director
Patent Technology Center 3600
Telephone No.: (571) 272-5250

km/lm: 2/6/12
LM

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Broncus Technologies, Inc. c/o
Levine Bagade Han LLP
2400 Geng Road
Suite 120
Palo Alto CA 94303

MAILED
DEC 30 2011
OFFICE OF PETITIONS

In re Application of	:	DECISION ON PETITION
Edmund Roschak	:	UNDER 37 CFR 1.78(a)(3)
Application No. 11/538,950	:	
Filed: October 5, 2006	:	
Attorney Docket No. BRONNE01700	:	
	:	

This is a decision on the PETITION TO ACCEPT AN UNINTENTIONALLY DELAYED CLAIM FOR PRIORITY UNDER 35 U.S.C. § 120 AND 37 C.F.R. 1.78(a)(2) filed December 14, 2011, to accept an unintentionally delayed claim to prior-filed application number 10/895,022.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR § 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR § 1.78(a)(2)(ii), and must be filed during the pendency of the nonprovisional application. In addition, the petition under 37 CFR § 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR § 1.78(a)(2)(i) of the prior-filed 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 37 CFR §§ 1.78(a)(2)(ii), and the date the claim was filed was unintentional. The Director may require additional where there is a question whether the delay was unintentional.

The instant application was filed after November 29, 2000. A review of the application as filed reveals that the claims for priority set forth on petition were not submitted on filing in the first sentence of the specification or in an application data sheet. The four and sixteen-month periods specified in 37 CFR §§ 1.78(a)(2)(ii) and 37 CFR 1.78(a)(5)(ii) have expired. Thus, the instant petition is appropriate. In addition, the petition includes the required statement of unintentional delay and the required surcharge.

On petition, a reference to the prior-filed nonprovisional application has been included in an amendment, as required by 37 CFR 1.78(a)(2)(iii).

With respect to 35 U.S.C. 120 and 37 CFR 1.78(a)(3), the amendment includes a reference to prior-filed application No. 10/895,022, with the relationship stated as continuation-in-part.

All of the above requirements having been satisfied, the late claim for benefit of priority to the prior-filed application under 35 U.S.C. § 120 is accepted as being unintentionally delayed.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR § 1.78(a)(3) should not be construed as meaning that this application is entitled to the benefit of the filing date of the prior-filed application. In order for this application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. §§120 and 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed application, accompanies this decision on petition.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3219. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This application is being referred to Technology Center Art Unit 3767 for consideration by the examiner of the claim for benefit of priority under 35 U.S.C. §120 of the prior-filed applications as set forth in the amendment filed September 30, 2011.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
11/538,950	10/05/2006	3767	542	BRONNE01700	17	1

CONFIRMATION NO. 2860

CORRECTED FILING RECEIPT

74059
Broncus Technologies, Inc. c/o
Levine Bagade Han LLP
2400 Geng Road
Suite 120
Palo Alto, CA 94303

OC000000051766078

Date Mailed: 01/03/2012

Receipt is acknowledged of this non-provisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections**

Applicant(s)

Edmund J. ROSCHAK, Mission Viejo, CA;

Assignment For Published Patent Application

BRONCUS TECHNOLOGIES, INC., Mountain View, CA

Power of Attorney: The patent practitioners associated with Customer Number 40518

Domestic Priority data as claimed by applicant

This application is a CIP of 10/895,022 07/19/2004 ABN

Foreign Applications (You may be eligible to benefit from the **Patent Prosecution Highway** program at the USPTO. Please see http://www.uspto.gov for more information.)

If Required, Foreign Filing License Granted: 01/27/2007

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/538,950**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No
**** SMALL ENTITY ****

Title

DEVICES FOR DELIVERING SUBSTANCES THROUGH AN EXTRA-ANATOMIC OPENING CREATED IN AN AIRWAY

Preliminary Class

604

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at http://www.uspto.gov/web/offices/pac/doc/general/index.html.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, http://www.stopfakes.gov. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where

the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

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OFFICE OF PETITIONS

ZYMOGENETICS, INC.
INTELLECTUAL PROPERTY
DEPARTMENT
1201 EASTLAKE AVENUE EAST
SEATTLE WA 98102-3702

In re Patent No. 7,601,809	:	DECISION
PRESNELL et al.	:	DISMISSING REQUEST FOR
Issue Date: 10/13/2009	:	RECONSIDERATION OF PATENT
Application No. 11/539,072	:	TERM ADJUSTMENT
Filed: 10/05/2006	:	UNDER 37 CFR 1.705(d)
Attorney Docket No. 00-108D1	:	

This is a decision on the petition filed June 17, 2010, which is being treated as a the petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by twenty-six (26) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **DISMISSED**.

Patentee is given **TWO (2) MONTHS** from the mailing date of this decision to respond. No extensions of time will be granted under 37 CFR 1.136.

37 CFR 1.703(b) indicates that the period of adjustment under 37 CFR 1.702(b) ("over three year period") is the number of days, if any, in the period beginning on the day after the date that is three years after the actual filing date of the application and ending on the date a patent was issued. 35 U.S.C. 154(b)(1)(B). However, 37 CFR 1.703(b) also sets forth the limitations on patent term adjustment specified in 35 U.S.C. 154(b)(1)(B)(i) and (ii). Specifically, 37 CFR 1.703(b)(4) provides that the period of adjustment of the term of a patent

shall not include the period equal to the sum of the period of pendency consumed by appellate review under 35 U.S.C. 134, 141, 145, whether successful or unsuccessful (35 U.S.C. 154(b)(1)(B)(ii)).

The Office agrees with patentee that the over three year period is 8 days. However, patentee failed to account for the filing of the notice of appeal on April 13, 2009. The Office reminds patentee that the period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii).

In this instance, the period consumed by appellate review is 47 days, beginning on the date on which the notice of appeal to the Board of Patent Appeals and Interferences was filed, April 13, 2009, and ending on the date of the mailing of the notice of allowance, May 29, 2009. See 37 CFR 1.703(b)(4). Thus, the B delay is 0 days.

Accordingly, the patent term adjustment is 18 days (120 days of A delay + 0 days of B delay - 102 days of applicant delay).

In view thereof, no change will be made in the revised determination of patent term adjustment at the time of the issuance of the patent.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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H.C. PARK & ASSOCIATES, PLC
8500 LEESBURG PIKE
SUITE 7500
VIENNA VA 22182

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NOV 05 2010

OFFICE OF PETITIONS

In re Application of
Yao Zhiying et al.
Application No. 11/539,084
Filed: October 5, 2006
Attorney Docket No: P1994US00

: ON PETITION

This is a decision on the PETITION FOR SUSPENSION OF RULES UNDER 37 C.F.R. §1.183 filed October 20, 2010 under 37 CFR 1.183 seeking waiver of 37 CFR §§ 1.131 where it requires that an affidavit be executed by the named inventors.

The petition under 37 CFR 1.183 is **GRANTED**.

The above-identified application was filed on October 5, 2006 with an Oath fully executed by all of the co-inventors. In response to a Final Office Action mailed July 7, 2010, which set a shortened statutory period for reply of three months, applicant submitted a reply and a declaration under 37 CFR 1.131 and a one month extension of time. The 37 CFR 1.131 declaration stated that all of the inventors were responsible for reduction to practice of the subject matter of the rejected claims prior to the date of the reference on which the July 7, 2010 rejection was based. However, the 37 CFR 1.131 declaration was signed by all joint inventors except joint inventor Yao Zhiying. Applicant has filed the instant petition to have the 37 CFR 1.131 declaration entered despite the fact that the declaration was not signed by joint inventor Zhiying. According to applicant, joint inventor Zhiying is unavailable.

37 CFR 1.131 states, in pertinent part:

> When any claim of an application or a patent under reexamination is rejected, the **inventor** of the subject matter of the rejected claim, the owner of the patent under reexamination, or the party qualified under §§ 1.42, 1.43, or 1.47, may submit an appropriate oath or declaration to establish invention of the subject matter of the rejected claim prior to the effective date of the reference or activity on which the rejection is based.[1]

In addition, the Manual of Patent Examining Procedure states that "an application or

[1] 37 CFR 1.131(a) (emphasis added).

declaration by less than all named inventors of an application is accepted where it is shown that less than all named inventors of an application invented the subject matter of the claim or claims under rejection."[2]

Here, there has not been a party qualified under 37 CFR 1.42, 1.43, or 1.47. In addition, the instant application is not the subject of a patent under reexamination. Moreover, it has not been shown that less than all of the named inventors of the application invented the subject matter of the claims under rejection. Accordingly, the only party eligible to sign the 37 CFR 1.131 declaration are all of the joint inventors including Zhiying.

The petition bears proof that efforts to have joint inventor Yao Zhiying execute the declaration under 37 CFR 1.131 have been employed but have not been successful.

In order for a petition under 37 CFR 1.183 to be granted, petitioner must demonstrate that this is an extraordinary situation where justice requires waiver of the rules.

The 37 CFR 1.131 declaration was required to be signed by all joint inventors but all except joint inventor Zhiying have executed it. Applicant has demonstrated that a *bona fide* effort has been employed. Accordingly, it is concluded that petitioner has demonstrated that this is an extraordinary situation requiring waiver of the rules.

The 37 CFR 1.131 declaration will be entered, despite the fact that its requirement that all of the inventors sign the declaration has not been satisfied.

The petition fee in the amount of $400 has been charged to the credit card provided.

The application file is being forwarded to Technology Center 2617 for consideration of the reply and the 37 CFR 1.131 declaration, filed October 20, 2010.

Telephone inquiries related to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

---

[2] MPEP 715.04.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 11-17-09 Paper No.: _____

TO SPE OF : ART UNIT 1648

SUBJECT : Request for Certificate of Correction for Appl. No.: 11539123 Patent No.: 7468187

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Valerie Dodson
Certificates of Correction Branch
703-756-1573

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☒ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: _____

/Zachariah Lucas/ 1648
SPE **Art Unit**

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United States Patent and Trademark Office
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FROMMER LAWRENCE & HAUG
745 FIFTH AVENUE- 10TH FL.
NEW YORK, NY 10151

Mail Date: 08/05/2010

Applicant	: Maria Fardis	: DECISION ON REQUEST FOR
Patent Number	: 7655623	: RECALCULATION of PATENT
Issue Date	: 02/02/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/539,139	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 10/05/2006	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **169** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

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OFFICE OF PETITIONS

PHILIP S. JOHNSON
JOHNSON & JOHNSON
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK NJ 08933-7003

In re Patent of Mahoney et al	:	DECISION ON
Patent No. 7,892,260	:	REQUEST FOR RECONSIDERATION
Issue Date: February 22, 2011	:	OF
Application No. 11/539,295	:	PATENT TERM ADJUSTMENT &
Filed: October 6, 2006	:	NOTICE OF INTENT TO ISSUE
Atty Docket No. 101896-467(DEP5760USNP)		

This is a decision on the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(d) AFTER PATENT ISSUANCE, filed April 22, 2011. Patentees request that the revised patent term adjustment indicated on the patent be corrected from five hundred fifty-two (552) days to four hundred fourteen (414) days.

The petition is **GRANTED to the extent indicated herein.**

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of five hundred thirty-one (531) days.

On February 22, 2011, the above-identified application matured into U.S. Patent No. 7,892,260 with a revised patent term adjustment of 552 days. On April 22, 2011, patentees timely filed the instant petition.

Patentees argue that the patent term adjustment indicated in the patent is incorrect and should be recalculated because the Office should not have charged applicant with a 109 day reduction under 37 CFR 1.704(c)(10) for the filing of a Communication Regarding Patent Term Adjustment on October 26, , 2010, after the mailing of the Notice of Allowance on July 28, 2010.

The filing of the October 26, 2010 communication regarding patent term adjustment **is** a basis for reduction of patent term adjustment pursuant to 37 CFR 1.704(c)(10).

Per 37 CFR 1.704(e) Submission of an application for patent term adjustment under § 1.705(b) (with or without request under § 1.705(c) for reinstatement of reduced patent term adjustment) will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraph (c)(10) of this section.

However, MPEP 2772 explains, "...Other papers concerning patent term adjustment (e.g., status letters, untimely applications for patent term adjustment, requests for reconsideration of the Office's decisions on applications for patent term adjustment, petitions under 37 CFR 1.181, 1.182, or 1.183 concerning patent term adjustment, or miscellaneous letters concerning patent term adjustment), however, will be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under 37 CFR 1.704(c)(10).

The October 26, 2010 communication regarding patent term adjustment is **not** an application for patent term adjustment. It is a miscellaneous letter concerning patent term adjustment, as discussed in MPEP 2772. As such, a 109 day reduction pursuant to 37 CFR 1.704(c)(10) is warranted in connection with the filing of the candor letter of October 26, 2010. The period of reduction begins on October 26, 2010 and ends on February 22, 2011, when the patent issued, and is 120 days. Eleven (11) days are subtracted from the 120 day reduction because they overlap with the reduction already assessed for the Rule 312 amendment that was filed on October 26, 2010. Accordingly, the 109 day period of reduction will not be removed.

Patentees are correct that the Office failed to enter a reduction for an Information Disclosure Statement filed on June 11, 2010. After applicants filed a reply on May 21, 2010 to a final Office action, applicants submitted a supplemental reply or paper in the form of an Information Disclosure Statement (IDS) on June 11, 2010. The record does not support a conclusion that the examiner expressly requested the filing of the IDS. Further, a review of the IDS, filed June 11, 2010, reveals that applicants did not include a statement under 37 CFR 1.704(d).[1]

[1] Pursuant to 37 CFR § 1.704(d):

Thus, applicants failed to engage in reasonable efforts to conclude prosecution of the application. The period of adjustment should have been reduced by 21 days pursuant to 37 CFR 1.704(c)(8), counting the number of days beginning on the day after the date the initial reply was filed, May 22, 2010, and ending on the date that the IDS was filed, June 11, 2010. Accordingly, a period of reduction of 21 days is being entered.

In view thereof, the patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of five hundred thirty-one (531) days, which is 446 days of A delay + 226 days of B delay minus 141 (21 + 11 + 109) days of Applicant delay.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Deposit account no. 10-0750 will be charged the required $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in

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A paper containing only an information disclosure statement in compliance with §§ 1.97 and 1.98 will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraphs (c)(6), (c)(8), (c)(9), or (c)(10) of this section if it is accompanied by a statement that each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement. This thirty-day period is not extendable.

order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **five hundred thirty-one (531)** days.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,892,260 B2

DATED : **February 22, 2011** **DRAFT**

INVENTOR(S) : Mahoney et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 552 days

Delete the phrase "by 552 days" and insert – by 531 days--

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In re Patent of Mahoney et al	:	CORRECTED DECISION ON
Patent No. 7,892,260	:	REQUEST FOR RECONSIDERATION
Issue Date: February 22, 2011	:	OF
Application No. 11/539,295	:	PATENT TERM ADJUSTMENT &
Filed: October 6, 2006	:	NOTICE OF INTENT TO ISSUE
Atty Docket No. 101896-467(DEP5760USNP)	:	CERTIFICATE OF CORRECTION

This is a corrected decision on the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(d) AFTER PATENT ISSUANCE, filed April 22, 2011. The decision mailed on May 20, 2011 is hereby vacated. Patentees request that the revised patent term adjustment indicated on the patent be corrected from five hundred fifty-two (552) days to four hundred fourteen (414) days.

The request for reconsideration of patent term adjustment is **GRANTED to the extent indicated herein**.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of six hundred forty (640) days.

On February 22, 2011, the above-identified application matured into U.S. Patent No. 7,892,260 with a revised patent term adjustment of 552 days. On April 22, 2011, patentees timely filed the instant petition.

Patentees argue that the patent term adjustment indicated in the patent is incorrect and should be recalculated because the Office should not have charged applicants with a 109 day reduction under 37 CFR 1.704(c)(10) for the filing of a Communication Regarding Patent Term Adjustment on October 26, , 2010, after the mailing of the Notice of Allowance on July 28, 2010.

Patentees are correct. A review of the record confirms that a period of reduction of 109 days was entered for the filing of a candor letter on October 26, 2010.

§ 1.704(e) provides that:

> Submission of an application for patent term adjustment under § 1.705(b) (with or without request under §1.705(c) for reinstatement of reduced patent term adjustment) will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraph (c)(10) of this section.

Likewise, filing of a letter pursuant to comment 43 is covered by 37 CFR 1.704(e). Therefore, the Patent Term Adjustment was incorrectly reduced. Consequently 109 days will be properly restored to patentees' patent term adjustment.

Patentees are correct that the Office failed to enter a reduction for an Information Disclosure Statement filed on June 11, 2010. After applicants filed a reply on May 21, 2010 to a final Office action, applicants submitted a supplemental reply or paper in the form of an Information Disclosure Statement (IDS) on June 11, 2010. The record does not support a conclusion that the examiner expressly requested the filing of the IDS. Further, a review of the IDS, filed June 11, 2010, reveals that applicants did not include a statement under 37 CFR 1.704(d).[1] Thus, applicants failed to engage in reasonable efforts to conclude prosecution of the application. The period of adjustment should have been reduced by 21 days pursuant to 37 CFR 1.704(c)(8), counting the number of days beginning on the day after the date the initial reply was filed, May 22, 2010,

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[1] Pursuant to 37 CFR § 1.704(d):

> A paper containing only an information disclosure statement in compliance with §§ 1.97 and 1.98 will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraphs (c)(6), (c)(8), (c)(9), or (c)(10) of this section if it is accompanied by a statement that each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement. This thirty-day period is not extendable.

and ending on the date that the IDS was filed, June 11, 2010. Accordingly, a period of reduction of 21 days is being entered.

In view thereof, the patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of six hundred forty (640) days, which is 446 days of A delay + 226 days of B delay minus 32 (21 + 11) days of Applicant delay.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

No fee is required. The previously charged $200.00 fee will be refunded to deposit account no.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **six hundred forty (640)** days.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,892,260 B2

DATED : **February 22, 2011** **DRAFT**

INVENTOR(S) : Mahoney et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 552 days

Delete the phrase "by 552 days" and insert – by 640 days--

PALM INTRANET

Day : Thursday
Date: 4/14/2011
Time: 12:45:17

Inventor Name Search

Enter the first few letters of the Inventor's Last Name.
Additionally, enter the first few letters of the Inventor's First name.

Last Name	First Name	
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OFFICE OF PETITIONS

NAVAL RESEARCH LABORATORY
ASSOCIATE COUNSEL (PATENTS)
CODE 1008.2
4555 OVERLOOK AVENUE, S.W.
WASHINGTON DC 20375-5320

In re Application of	:	
Richard F. Hubbard, et al.	:	
Application No. 11/539,380	:	DECISION ON PETITION
Filed: October 6, 2006	:	
Attorney Docket No. 97522-US2	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 14, 2010, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue fee on or before June 23, 2010, as required by the Notice of Allowance and Fee(s) Due, mailed March 23, 2010. Accordingly, the date of abandonment of this application is June 24, 2010. The Notice of Abandonment was mailed July 12, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1,510, (2) the petition fee of $1,620; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to Terri Johnson at (571) 272-2991.

This application is being referred to the Office of Data Management for processing into a patent.

Terri Johnson
Petitions Examiner
Office of Petitions

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FISH & RICHARDSON P.C. (DC)
P.O. BOX 1022
MINNEAPOLIS, MN 55440-1022

MAILED

OCT 25 2011

OFFICE OF PETITIONS

In re Application of :
Atsushi Umezaki :
Application No.: 11/539,429 : ON PETITION
Filed: October 6, 2006 :
Attorney Docket No.: 12732-394001 :

This is a decision on the petition, filed October 24, 2011, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on September 22, 2011, cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries relating to this decision should be directed to the undersigned at (571) 272-3204.

The application is being referred to Technology Center AU 2629 for further processing of the request for continued examination under 37 CFR 1.114.

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.*

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LEVINE BAGADE HAN LLP
2400 GENG ROAD, SUITE 120
PALO ALTO CA 94303

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FEB 03 2011

OFFICE OF PETITIONS

In re Application of :
Brice Maxime Arnault De La Menardiere et al. : DECISION ON PETITION
Application No. 11/539,478 :
Filed: October 6, 2006 :
Attorney Docket No: DUKENZ01200 :

This is a decision on the petition filed November 19, 2010 under 37 CFR 1.181 to withdraw the holding of abandonment of the above-identified application.

The petition under 37 CFR 1.181 is GRANTED.

The above-referenced application was held abandoned on August 3, 2010, for failure to file a timely response to the Office Communication mailed February 1, 2010 which set the longer of one month or 30 days for reply. Accordingly, a Notice of Abandonment was mailed October 13, 2010.

Petitioner argues that the period for response with extensions of time pursuant to 37 CFR 1.136(a) had not lapsed and thus the Abandonment and Notice of Abandonment are premature.

Under the provisions of 37 CFR 1.136(a), an extension of time up to five months from March 3, 2010 could be obtained making the response due date not later than August 3, 2010 as claimed by petitioner. As the period for extensions had not expired, and as an Election to the Restriction Requirement and a five month extension of time was filed August 3, 2010, the application is not abandoned and the Notice of Abandonment was mailed prematurely.

In view thereof, the response was timely filed and the Notice of Abandonment was sent in error and is hereby withdrawn. No fee for the petition to withdraw the holding of abandonment is due and none has been charged.

This application is being forwarded to Technology Center 3774 for review of the response filed August 3, 2010.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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PHILIP S. JOHNSON
JOHNSON & JOHNSON
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK NJ 08933-7003

MAILED
JUN. 14 2011
OFFICE OF PETITIONS

In re Patent No. 7,918,857
Issued: April 5, 2011
Application No. 11/539,496
Filed: October 6, 2006
Dkt. No.: 101896-472

: DECISION ON PATENT TERM
: ADJUSTMENT and NOTICE OF INTENT
: TO ISSUE CERTIFICATE OF
: CORRECTION
:

This is a decision on the petition filed on June 2, 2011 requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by 834 days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by 834 days is **GRANTED**.

The required $200.00 fee set forth in 37 CFR 1.18(e) has been charged to the authorized deposit account. As the fee is a prerequisite prior to treatment on the merits of any request for reconsideration of patent term adjustment, the fee will not be waived or refunded.

The application is being forwarded to the Certificates of Corrections Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by 834 days.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Adviser
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,918,857

DATED : April 5, 2011 **DRAFT**

INVENTOR(S) : Dziedzic, et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 787 days

Delete the phrase "by 787 days" and insert – by 834 days--

EAST Search History

EAST Search History (Prior Art)

Ref #	Hits	Search Query	DBs	Default Operator	Plurals	Time Stamp
S1	2	("0539602").PN.	USPAT; USOCR	OR	OFF	2009/11/04 08:11
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S3	21	"539602"	US-PGPUB; USPAT	OR	OFF	2009/11/04 08:11
S4	0	"11539602"	US-PGPUB; USPAT	OR	OFF	2009/11/04 08:12
S5	0	("11539602").PN.	USPAT; USOCR	OR	OFF	2009/11/04 08:12
S6	0	("539602.pn.").PN.	USPAT; USOCR	OR	OFF	2009/11/04 08:13
S7	0	"539602".pn.	US-PGPUB; USPAT	OR	OFF	2009/11/04 08:13
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S9	1	"1539602".pn.	US-PGPUB; USPAT	OR	OFF	2009/11/04 08:15
S10	0	"539602".in.	US-PGPUB; USPAT	OR	OFF	2009/11/04 08:15
S11	0	"11539602".in.	US-PGPUB; USPAT; USOCR; DERWENT	OR	OFF	2009/11/04 08:16
S12	0	(11/539602).APP.	USPAT; USOCR	OR	OFF	2009/11/04 08:17
S13	0	("539602.app.").PN.	USPAT; USOCR	OR	OFF	2009/11/04 08:17
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S15	0	"539602".app.	US-PGPUB; USPAT	OR	OFF	2009/11/04 08:18
S16	0	"11/539602".app.	US-PGPUB; USPAT	OR	OFF	2009/11/04 08:54
S17	1	"11/844612".app.	US-PGPUB; USPAT	OR	OFF	2009/11/04 08:56
S18	552	206/583	US-PGPUB; USPAT; USOCR; FPRS; EPO; DERWENT	OR	OFF	2009/11/04 15:34
S19	1698	206/521	US-PGPUB; USPAT; USOCR; FPRS; EPO; DERWENT	OR	OFF	2009/11/04 15:42

S20	759	206/592	US-PGPUB; USPAT; USOCR; FPRS; EPO; DERWENT	OR	OFF	2009/11/04 18:01
S21	39	("1464998" | "2493380" | "2500786" | "3072244" | "3241209" | "3900121" | "4245685" | "4300612" | "5605242" | "5704484" | "6793076" | "D235104" | "D249591" | "D254180" | "D292881" | "D315095" | "D321649" | "D360583" | "D387662" | "D403957" | "D412373" | "D424431" | "D450591" | "D474021" | "D499552" | "D530218" | "D532714" | "D535476" | "D541046" | "D548973" | "D554865" | "D558451" | "D558978").PN. OR ("D588361").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2009/11/05 08:27
S22	214	220/23.89	US-PGPUB; USPAT; USOCR; FPRS; EPO; DERWENT	OR	OFF	2009/11/05 08:45
S23	427	206/593	US-PGPUB; USPAT; USOCR; FPRS; EPO; DERWENT	OR	OFF	2009/11/05 11:27
S24	3	("2001/0020595").URPN.	USPAT	OR	OFF	2009/11/09 08:49
S25	65	("20010020595" | "20020023857" | "20060076253" | "2783879" | "2863595" | "3128030" | "3164478" | "3256975" | "3416690" | "3580467" | "3583559" | "3756383" | "3835994" | "4241830" | "4483444" | "4593816" | "4673605" | "4838427" | "4840276" | "4860894" | "5154297" | "5226372" | "5253755" | "5259508" | "5320226" | "5366080" | "5643656" | "5678692" | "5685429" | "5706951" | "5715940" | "5738219" | "5755332" | "5769233" | "5775508" | "5806286" | "5826726" | "5934463" | "5993745" | "6010007" | "6092651" | "6105765" | "6116423" | "6142304" | "6216885" | "6298989" | "6340087" | "6382422" | "6405873" | "6588595" | "6629608" | "6786334" | "6820743" | "6840381" | "6866150" | "7134553" | "7237675" | "RE37253").PN. OR ("7093717" | "7341152" | "7584851").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2009/11/09 08:50

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S28	0	2001/0020595A1.pn.	US-PGPUB; USPAT; USOCR; FPRS; JPO	OR	OFF	2009/11/09 17:42
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S31	704	(adhesive or paste or glue or adhere) and 206/521	US-PGPUB; USPAT; USOCR; FPRS; JPO	OR	OFF	2009/11/10 14:08
S32	854	corrugat$2 adj container	USPAT	OR	ON	2010/05/04 17:50
S33	0	6308831B1	USPAT	OR	ON	2010/05/05 18:27
S34	0	6308831B1	US-PGPUB; USPAT	OR	ON	2010/05/05 18:27
S35	1	6308831B1	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT	OR	ON	2010/05/05 18:27
S36	375693	glue or staple or nailing or taping	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT	OR	ON	2010/10/20 15:18

S37	2376327	glue or stapl$3 or nail$3 or tap$3	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT	OR	ON	2010/10/20 15:19
S38	802	206/592	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT	OR	ON	2010/10/20 15:19
S39	290419	S38 an d7	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT	OR	ON	2010/10/20 15:19
S40	274	S38 and S37	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT	OR	ON	2010/10/20 15:19
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S42	25818	outer adj (container or box)	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT	OR	ON	2010/10/20 15:25
S43	16138	inner adj container	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT	OR	ON	2010/10/20 15:25
S44	0	S42 and S43 and S41 and S38	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT	OR	ON	2010/10/20 15:26
S45	0	S43 and S41 and S38	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT	OR	ON	2010/10/20 15:26
S46	6	"5692618"	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT	OR	ON	2010/10/20 15:26
S47	12	("3356209" | "4201293" | "4211356" | "4287265" | "5181611" | "5518118" | "5522539").PN. OR ("5692618"). URPN.	US-PGPUB; USPAT; USOCR	OR	ON	2010/10/20 15:29
S48	0	6883693B2	US-PGPUB; USPAT; USOCR	OR	ON	2010/10/20 18:21
S49	4	"6883693"	US-PGPUB; USPAT; USOCR	OR	ON	2010/10/20 18:21

S50	8564	outer adj box	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT	OR	ON	2010/10/21 14:06
S51	7379	inner adj box	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT	OR	ON	2010/10/21 14:06
S52	1585896	adhesive	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT	OR	ON	2010/10/21 14:06
S53	23627	(outer or external or outside or cover $3) with (receptacle or container or box) with (glue or gluing or stapl$3 or nail$3 or adher$3 or adhesive)	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT	OR	ON	2010/10/21 15:45
S54	5965	(206/592,583,593,592,521.ccls. or 220/23.83,23.87,23.89.ccls.)	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT	OR	ON	2010/10/21 15:47
S55	149	S53 and S54	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT	OR	ON	2010/10/21 15:47

EAST Search History (Interference)

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11/5/2010 5:35:21 PM
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OFFICE OF PETITIONS

MICHAEL P. MORRIS
BOEHRINGER INGELHEIM US CORPORATION
900 RIDGEBURG ROAD
RIDGEFORD CT 06877-0368

In re Application of	:	
CALIS, et al	:	
Application No. 11/539,769	:	ON PETITION
Filed: October 9, 2006	:	
Attorney Docket No. 10-0095	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 7, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of November 17, 2010. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). A three (3) month extension of time pursuant to the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the date of abandonment of this application is May 18, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $810, and the submission required by 37 CFR 1.114; (2) the petition fee of $1620; and (3) a proper statement of unintentional delay.

There is no indication that the person signing the petition was ever given a power of attorney to prosecute the application. If the person signing the petition desires to receive future correspondence regarding this application, the appropriate power of attorney document must be submitted. While a courtesy copy of this decision is being mailed to the person signing the

petition, all future correspondence will be directed to the address currently of record until appropriate instructions are received.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

This application is being referred to Technology Center AU 1611 for appropriate action by the Examiner.

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

cc: PAUL A. SERBINOWSKI
1801 E. 9TH STREET, SUITE 1200
CLEVELAND, OH 44114-3108

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In re Application of
WALTER E. PELTON

Application No. 11539820

Filed: October 9,2006

Attorney Docket No. 042943/318177

:
:
:DECISION ON PETITION TO MAKE SPECIAL
:UNDER 37 CFR 1.102(c)(1)
:

This is a decision on the electronic petition under 37 CFR 1.102 (c)(1), filed 10-MAR-2011 to make the above-identified application special based on applicant's age as set forth in MPEP § 708.02, Section IV.

The petition is **GRANTED**.

A grantable petition to make an application special under 37 CFR 1.102(c)(1), MPEP § 708.02, Section IV: Applicant's Age must include a statement by applicant or a registered practitioner having evidence that applicant is at least 65 years of age. No fee is required.

Accordingly, the above-identified application has been accorded "special" status and will be taken up for action by the examiner upon the completion of all pre-examination processing.

Telephone inquiries concerning this electronic decision should be directed to the Electronic Business Center at 866-217-9197.

All other inquiries concerning either the examination or status of the application should be directed to the Technology Center.

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KOLISCH HARTWELL, P.C.
MATTEL CUSTOMER NUMBER
200 PACIFIC BUILDING
520 SW YAMHILL STREET
PORTLAND OR 97204

MAILED
AUG 02 2011
OFFICE OF PETITIONS

In re Application of
Ethan Wood
Application No. 11/539,833
Filed: October 9, 2006
Attorney Docket No. MAT 3Z135

DECISION ON PETITION

This is a decision on the petition under the unavoidable provisions of 37 CFR 1.137(a), filed May 5, 2011, to revive the above-identified application.

The petition is **DISMISSED.**

Any further petition to revive must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(a)." This is **not** a final agency action within the meaning of 5 U.S.C.§ 704.

A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(l); (3) a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(d). The instant petition lacks item (3).

The application became abandoned on April 6, 2011 for failure to respond to the Notice of Allowance and Issue Fee Due mailed January 5, 2011. While the examiner issued a supplemental Notice of Allowability after the date of abandonment of the instant application on April 7, 2011, it is irrelevant to the abandonment of this application because petitioner is required by law to respond timely to any outstanding Notice as the condition of the application may

require. See 35 U.S.C. 133 and 37 CFR 1.135. In the instant application petitioner failed to pay the issue and publication fee due and failed to withdraw the application from issue. As such, the application was properly held abandoned. That petitioner may have been discussing claim amendments with the examiner is irrelevant to the holding of abandonment of this application as petitioner knew, or should have known, that the issue and publication fee were due on or before April 5, 2011. Additionally, the discussing of claim amendments is not a basis for unavoidable delay in paying the issue fee and publication fee due. Furthermore, while an examiner has the authority to issue a supplemental Notice of Allowability, an examiner does not have the authority to withdraw an application from issue or withdraw a Notice of Allowance and Issue Fee Due. As set forth in MPEP 1308 II:

If the issue fee **has not** been paid and the deadline for payment has not expired:

(A) Prepare, date stamp, and mail a "withdrawal from issue" letter signed by the TC Director to the applicant to effectuate the withdrawal from issue, using form paragraph 10.01. A copy of the "Withdrawal from Issue" letter should be sent to the Office of Patent Publication.

Furthermore, delay resulting from the lack of knowledge or improper application of the patent statute, rules of practice or the MPEP , however, does not constitute an "unavoidable" delay. *See* Haines v. Quigg, 673 F. Supp. at 314, 317, 5 USPQ2d at 1132; Vincent v. Mossinghoff, 230 USPQ 621, 624 (D.D.C. 1985); Smith v. Diamond, 209 USPQ 1091 (D.D.C. 1981); Potter v. Dann, 201 USPQ 574 (D.D.C. 1978); Ex parte Murray, 1891 Dec. Comm'r Pat. 130, 131 (1891). For example, as 37 CFR 1.116 and 1.135(b) are manifest that proceedings concerning an amendment after final rejection will not operate to avoid abandonment of the application in the absence of a timely and proper appeal, a delay is not "unavoidable" when the applicant simply permits the maximum extendable statutory period for reply to a final Office action to expire while awaiting a notice of allowance or other action. Likewise, as a "reasonably prudent person" would file papers or fees in compliance with 37 CFR 1.8 or 1.10 to ensure their timely filing in the USPTO, as well as preserve adequate evidence of such filing, a delay caused by an applicant's failure to file papers or fees in compliance with 37 CFR 1.8 and 1.10 does not constitute "unavoidable" delay. See Krahn, 15 USPQ2d at 1825. Finally, a delay caused by an applicant's lack of knowledge or improper application of the patent statute, rules of practice or the MPEP is not rendered "unavoidable" due to: (A) the applicant's reliance upon oral advice from USPTO employees; or (B) the USPTO's failure to advise the applicant of any deficiency in sufficient time to permit the applicant to take corrective action. See In re *See* In re Sivertz, 227 USPQ 255, 256 (Comm'r Pat. 1985).

As no evidence is present to substantiate an unavoidable delay manner, the petition is dismissed.

If petitioner cannot provide the evidence necessary to establish unavoidable delay, or simply does not wish to, petitioner may wish to consider filing a petition stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the petition fee set forth by 37 CFR 1.17(m).

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By Mail:
Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

By hand:
U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By facsimile:
(571) 273-8300
Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

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KOLISCH HARTWELL, P.C.
MATTEL CUSTOMER NUMBER
200 PACIFIC BUILDING
520 SW YAMHILL STREET
PORTLAND OR 97204

MAILED
SEP 02 2011
OFFICE OF PETITIONS

In re Application of :
Ethan Wood :
Application No. 11/539,833 : DECISION ON PETITION
Filed: October 9, 2006 :
Attorney Docket No. MAT 3Z135 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 16, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Notice of Allowance/Notice of Allowability mailed April 7,2011, is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.

This application is being referred to the Office of Data Management to be processed into a patent.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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SCHWABE, WILLIAMSON & WYATT, P.C.
PACWEST CENTER, SUITE 1900
1211 S.W. FIFTH AVE.
PORTLAND, OR 97204

Mail Date: 08/31/2010

Applicant	: Qinghua Li	: DECISION ON REQUEST FOR
Patent Number	: 7661038	: RECALCULATION of PATENT
Issue Date	: 02/09/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/539,867	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 10/09/2006	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **687** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

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GOODWIN PROCTER LLP
ATTN: PATENT ADMINISTRATOR
135 COMMONWEALTH DRIVE
MENLO PARK CA 94025-1105

MAILED
OCT 07 2011
OFFICE OF PETITIONS

In re Application of	:	
Briggs et al.	:	
Application No. 11/539,945	:	DECISION ON PETITION
Filed: 10/10/2006	:	
Attorney Docket No. 38187-2858.US	:	

This is in response to the letter entitled "COMMUNICATION" filed on October 3, 2011, which is taken as a petition under 37 CFR 1.47(a).

The petition is **DISMISSED AS MOOT**.

In accordance with 37 CFR 1.63(d), petitioner has submitted a copy of the executed oath or declaration filed in Application No. 10/237,262, filed on September 5, 2002, of which the subject application is a division. Furthermore, a copy of the decision, mailed on May 19, 2004, granting a petition to accord § 1.47(a) status in the above-referenced prior-filed application has been filed with the petition.

As Rule 1.47(a) status was granted in the prior application, this application is hereby accorded Rule 1.47(a) status.

As no petition is necessary to accord Rule 1.47(a) status in this application, the petition is dismissed as moot.

As provided in Rule 1.47(c), since notice was provided after the grant of Rule 1.47(a) status in the prior application, the Office is dispensing with the notice provision in this divisional application.

After this decision is mailed, the application is referred to the Office of Data Management for processing into a patent.

Telephone inquiries related to this decision should be directed to the undersigned at 571-272-3231.

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

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SIEMENS CORPORATION
INTELLECTUAL PROPERTY DEPARTMENT
170 WOOD AVENUE SOUTH
ISELIN NJ 08830

MAILED
DEC 01 2010
OFFICE OF PETITIONS

In re Application of :
Ti Chiun Chang, et al. :
Application No. 11/539,985 : DECISION ON PETITION
Filed: October 10, 2006 :
Attorney Docket No. 2005P18882 US01 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 2, 2010, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before February 10, 2010, as required by the Notice of Allowance and Fee(s) Due, mailed November 6, 2010. Accordingly, the date of abandonment of this application is February 11, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1,510 and the publication fee of $300, (2) the petition fee of $1,620; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to Terri Johnson at (571) 272-2991.

This application is being referred to the Office of Data Management for processing into a patent.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Decision Date : February 1, 2012

In re Application of :

Mitsuaki Osame

DECISION ON PETITION

UNDER CFR 1.313(c)(2)

Application No : 11539993

Filed : 10-Oct-2006

Attorney Docket No : 12732-0395001

This is an electronic decision on the petition under 37 CFR 1.313(c)(2), filed February 1, 2012 , to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid in this application cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.

Telephone inquiries concerning this decision should be directed to the Patent Electronic Business Center (EBC) at 866-217-9197.

This application file is being referred to Technology Center AU 2629 for processing of the request for continuing examination under 37 CFR 1.114 .

Office of Petitions

Doc Code: PET.AUTO Document Description: Petition automatically granted by EFS-Web	PTO/SB/140 U.S. Patent and Trademark Office Department of Commerce

Electronic Petition Request	**PETITION TO WITHDRAW AN APPLICATION FROM ISSUE AFTER PAYMENT OF THE ISSUE FEE UNDER 37 CFR 1.313(c)**
Application Number	11539993
Filing Date	10-Oct-2006
First Named Inventor	Mitsuaki Osame
Art Unit	2629
Examiner Name	NELSON LAM
Attorney Docket Number	12732-0395001
Title	SEMICONDUCTOR DEVICE, AND DISPLAY DEVICE AND ELECTRONIC EQUIPMENT EACH HAVING THE SAME

An application may be withdrawn from issue for further action upon petition by the applicant. To request that the Office withdraw an application from issue, applicant must file a petition under this section including the fee set forth in § 1.17(h) and a showing of good and sufficient reasons why withdrawal of the application from issue is necessary.

APPLICANT HEREBY PETITIONS TO WITHDRAW THIS APPLICATION FROM ISSUE UNDER 37 CFR 1.313(c).

A grantable petition requires the following items:
(1) Petition fee; and
(2) One of the following reasons:
(a) Unpatentability of one or more claims, which must be accompanied by an unequivocal statement that one or more claims are unpatentable, an amendment to such claim or claims, and an explanation as to how the amendment causes such claim or claims to be patentable;
(b) Consideration of a request for continued examination in compliance with § 1.114 (for a utility or plant application only); or
(c) Express abandonment of the application. Such express abandonment may be in favor of a continuing application, but not a CPA under 37 CFR 1.53(d).

Petition Fee

☐ Applicant claims SMALL ENTITY status. See 37 CFR 1.27.

☐ Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

☐ Applicant(s) status remains as SMALL ENTITY.

☒ Applicant(s) status remains as other than SMALL ENTITY

Reason for withdrawal from issue

◯ One or more claims are unpatentable ◉ Consideration of a request for continued examination (RCE) (List of Required Documents and Fees) ◯ Applicant hereby expressly abandons the instant application (any attorney/agent signing for this reason must have power of attorney pursuant to 37 CFR 1.32(b)).
RCE request,submission, and fee. ☐ I certify, in accordance with 37 CFR 1.4(d)(4) that : The RCE request ,submission, and fee have already been filed in the above-identified application on ☒ Are attached.
THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES I certify, in accordance with 37 CFR 1.4(d)(4) that I am: ◉ An attorney or agent registered to practice before the Patent and Trademark Office who has been given power of attorney in this application. ◯ An attorney or agent registered to practice before the Patent and Trademark Office, acting in a representative capacity. ◯ A sole inventor ◯ A joint inventor; I certify that I am authorized to sign this submission on behalf of all of the inventors ◯ A joint inventor; all of whom are signing this e-petition ◯ The assignee of record of the entire interest that has properly made itself of record pursuant to 37 CFR 3.71

Signature	/John F. Hayden/
Name	John F. Hayden
Registration Number	37640

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LESAVICH HIGH-TECH LAW GROUP, P.C.
SUITE 325
39 S. LASALLE STREET
CHICAGO IL 60603

MAILED

JUN 01 2011

OFFICE OF PETITIONS

In re Application of	:	
ROSENTHAL, et al	:	
Application No. 11/540,062	:	DECISION ON PETITION
Filed: September 29, 2006	:	TO WITHDRAW
Attorney Docket No. 05,153-A	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed May 4, 2011.

The request is **NOT APPROVED.**

The Request to withdraw from record cannot be approved because the change of correspondence address is not that of an assignee who has properly intervened. The Office will either change the correspondence address of record to the most current address information provided for an assignee of the entire interest who properly became of record under 37 CFR 3.71 or, if no assignee of the entire interest has properly been made of record under 37 CFR 3.71, the most current address information provided for the first named inventor.

All future communications from the Office will continue to be directed to the above-identified address until otherwise properly notified.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272- 6735.

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

cc: ROSENTHAL COLLINS GROUP, LLC
216 W. JACKSON, SUITE 400
CHICAGO, IL 60606

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: 20120403

DATE : 11/17/10

TO SPE OF : ART UNIT 3653 KArmis StefanOS(Spe)

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/540178 Patent No.: 7591467

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D40-A
Palm Location 7580

Certificates of Correction Branch
703-756-1571

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☒ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: The request for certificate of correction is approved. During prosecution, claim 9 was dependent from claim 7. Upon allowance, claim 9 was renumbered as claim 8 and claim 7 was re-numbered as claim 6. Consequently patented claim 8 should depend from claim 6 rather than claim 1 as printed in patent 7,591,467.

/Stefanos Karmis/ — **SPE**

3653 — **Art Unit**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/540,218	09/29/2006	Robert P. Morris	1429/US	2349

52354 7590 02/04/2011

SCENERA RESEARCH, LLC
JENKINS, WILSON, TAYLOR & HUNT, P.A.
5400 Trinity Road
Suite 303
Raleigh, NC 27607

EXAMINER	
DISTEFANO, GREGORY A	

ART UNIT	PAPER NUMBER
2175	

MAIL DATE	DELIVERY MODE
02/04/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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SCENERA RESEARCH, LLC
JENKINS, WILSON, TAYLOR & HUNT, P.A.
5400 Trinity Road
Suite 303
Raleigh NC 27607

In re Application of:
MORRIS, Robert
Application No. 11/540,218
Filed: September 29, 2006
For: **METHODS, SYSTEMS, AND COMPUTER PROGRAM PRODUCTS FOR CONTROLLING PRESENTATION OF A RESOURCE BASED ON POSITION OR MOVEMENT OF A SELECTOR AND PRESENTABLE CONTENT**

DECISION ON PETITION UNDER 37 C.F.R. § 1.103(a)

This is a decision on the petition for suspension of prosecution under 37 CFR § 1.103(a) filed on January 24, 2011.

The petition is **GRANTED**.

Pursuant to applicant's requests filed on January 24, 2011, action by the Office is suspended on this application under 37 CFR § 1.103(a) for a period of ***three (3) months from the mailing date of this letter***. At the end of this period, applicant is required to notify the examiner and request continuance of prosecution or a further suspension. See MPEP § 709.

Suspension of action under 37 CFR § 1.103(a)-(d) at the applicant's request will cause a reduction in patent term adjustment accumulated (if any) under 37 CFR § 1.703. The reduction is equal to the number of days beginning on the date a request for suspension of action was filed and ending on the date of the termination of the suspension. See 37 CFR § 1.704(c)(1).

Any inquiry concerning this decision should be directed to Eddie C. Lee whose telephone number is (571) 272-1732.

Vincent Trans
Quality Assurance Specialist, TC 2100
571-272-3613

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/540,218	09/29/2006	Robert P. Morris	1429/US	2349

52354 7590 06/02/2011

SCENERA RESEARCH, LLC
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5400 Trinity Road
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Raleigh, NC 27607

EXAMINER	
DISTEFANO, GREGORY A	

ART UNIT	PAPER NUMBER
2175	

MAIL DATE	DELIVERY MODE
06/02/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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SCENERA RESEARCH, LLC
JENKINS, WILSON, TAYLOR & HUNT, P.A.
5400 Trinity Road
Suite 303
Raleigh NC 27607

In re Application of:
MORRIS, Robert
Application No. 11/540,218
Filed: September 29, 2006
For: **METHODS, SYSTEMS, AND COMPUTER PROGRAM PRODUCTS FOR CONTROLLING PRESENTATION OF A RESOURCE BASED ON POSITION OR MOVEMENT OF A SELECTOR AND PRESENTABLE CONTENT**

DECISION ON PETITION UNDER 37 C.F.R. § 1.103(a)

This is a decision on the petition for suspension of prosecution under 37 CFR § 1.103(a) filed on May 9, 2011.

The petition is **GRANTED**.

Pursuant to applicant's requests filed on May 9, 2011, action by the Office is suspended on this application under 37 CFR § 1.103(a) for a period of ***three (3) months from the mailing date of this letter***. At the end of this period, applicant is required to notify the examiner and request continuance of prosecution or a further suspension. See MPEP § 709.

Suspension of action under 37 CFR § 1.103(a)-(d) at the applicant's request will cause a reduction in patent term adjustment accumulated (if any) under 37 CFR § 1.703. The reduction is equal to the number of days beginning on the date a request for suspension of action was filed and ending on the date of the termination of the suspension. See 37 CFR § 1.704(c)(1).

Any inquiry concerning this decision should be directed to Eddie C. Lee whose telephone number is (571) 272-1732.

/Eddie C. Lee/

Quality Assurance Specialist, TC 2100

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/540,218	09/29/2006	Robert P. Morris	I429/US	2349

52354 7590 12/22/2011

SCENERA RESEARCH, LLC
JENKINS, WILSON, TAYLOR & HUNT, P.A.
5400 Trinity Road
Suite 303
Raleigh, NC 27607

EXAMINER	
BASHORE, WILLIAM L	
ART UNIT	PAPER NUMBER
2175	
MAIL DATE	DELIVERY MODE
12/22/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Kevin L. Wingate
SCENERA RESEARCH, LLC
5400 Trinity Road
Suite 303
Raleigh, North Carolina 27607

In re Application of:
Robert P. MORRIS
Appl. No.: 11/540,218
Filed: September 29, 2006
For: METHODS, SYSTEMS, AND COMPUTER PROGRAM PRODUCTS FOR CONTROLLING PRSENTATION OF A RESOURCE BASED ON POSITION OR MOVEMENT OF A SELECTOR AND PRESENTABLE CONTENT

DECISION ON PETITION UNDER 37 CFR § 1.103(a)

This is a decision on the petition for suspension of prosecutions under 37 CFR § 1.103(a) filed on 21 December 2011.

The petition is **GRANTED**.

Pursuant to applicant's requests filed on 21 December 2011, action by the Office is suspended on this application under 37 CFR § 1.103(a) for a period of ***three (3) months from the mailing date of this letter***. At the end of this period, applicant is required to notify the examiner and request continuance of prosecution or a further suspension. See MPEP § 709.

Suspension of action under 37 CFR § 1.103(a)-(d) at the applicant's request will cause a reduction in patent term adjustment accumulated (if any) under 37 CFR § 1.703. The reduction is equal to the number of days beginning on the date a request for suspension of action was filed and ending on the date of the termination of the suspension. See 37 CFR § 1.704(c)(1).

Any inquiry concerning this decision should be directed to the undersigned whose telephone number is (571) 272-3613.

/Vincent N. Trans/
Vincent N. Trans, QAS
Technology Center 2100
Computer Architecture and Software

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United States Patent and Trademark Office
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/540,218	09/29/2006	Robert P. Morris	1429/US	2349

52354 7590 03/29/2012

SCENERA RESEARCH, LLC
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5400 Trinity Road
Suite 303
Raleigh, NC 27607

EXAMINER	
BASHORE, WILLIAM L	
ART UNIT	PAPER NUMBER
2175	

MAIL DATE	DELIVERY MODE
03/29/2012	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Kevin L. Wingate
SCENERA RESEARCH, LLC
111 Corning Road
Suite 220
Cary, North Carolina 27518

In re Application of:
Robert P. MORRIS
Appl. No.: 11/540,218
Filed: September 09, 2006
For: METHODS, SYSTEMS, AND COMPUTER PROGRAM PRODUCTS FOR CONTROLLING PRESENTATION OF A RESOURCE BASED ON POSITION OR MOVEMENT OF A SELECTOR AND PRESENTABLE CONTENT

DECISION ON PETITION UNDER 37 CFR § 1.103(a)

This is a decision on the petition for suspension of prosecution under 37 CFR § 1.103(a) filed on 28 March 2012.

The petition is **GRANTED**.

Pursuant to applicant's request filed on 28 March 2012, action by the Office is suspended on this application under 37 CFR § 1.103(a) for a period of **three (3) months from the mailing date of this letter**. At the end of this period, applicant is required to notify the examiner and request continuance of prosecution or a further suspension. See MPEP § 709.

Suspension of action under 37 CFR § 1.103(a)-(d) at the applicant's request will cause a reduction in patent term adjustment accumulated (if any) under 37 CFR § 1.703. The reduction is equal to the number of days beginning on the date a request for suspension of action was filed and ending on the date of the termination of the suspension. See 37 CFR § 1.704(c)(1).

Any inquiry concerning this decision should be directed to the undersigned whose telephone number is (571) 272-3613.

/Vincent N. Trans/
Vincent N. Trans, QAS
Technology Center 2100
Computer Architecture and Software

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RYAN KROMHOLZ & MANION, S.C.
POST OFFICE BOX 26618
MILWAUKEE, WI 53226

MAILED

OCT 21 2010

OFFICE OF PETITIONS

In re Application of :
Lee Bolduc :
Application No. 11/540,427 : ON PETITION
Filed: September 29, 2006 :
Attorney Docket No.: 9494.17965-PROV FOR DIV 2 :

This is a decision in response to the Petition to Withdraw Holding of Abandonment Under 37 CFR 1.181(a), filed August 26, 2010.

The petition is not signed by an attorney of record. Nevertheless, in accordance with 37 CFR 1.34, the signature of Mr. Patrick J. Fleis appearing on the correspondence shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party on whose behalf he acts.

The petition is **GRANTED**.

This application was held abandoned as a result of a failure to file an appeal brief (and fee required by 37 CFR 41.20(b)(2)) within the time period provided in 37 CFR 41.37(a). A Notice of Abandonment was mailed on August 19, 2010.

In response, on August 26, 2010, the present petition was filed, wherein petitioner requests that the abandonment be withdrawn. Petitioner explains that the Notice of Abandonment was mailed prematurely, since extensions of time were available through August 23, 2010.

A review of the written record discloses that petitioner is correct. A Notice of Appeal was filed on January 25, 2010 using a Certificate of Mailing under 37 CFR 1.8 dated January 21, 2010. Accordingly, a response was due on or before March 25, 2010, with extensions of time available to the maximum period for response of August 25, 2010. Consequently, the Notice of Abandonment mailed August 19, 2010 was premature, and is hereby vacated.

The holding of abandonment is hereby withdrawn and the application is restored to pending status, in view of the timely appeal brief filed August 26, 2010, using a Certificate of Mailing under 37 CFR 1.8 dated August 23, 2010.

This application is being referred to Technology Center AU 3731 for appropriate action by the Examiner in the normal course of business on the reply received August 26, 2010.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3204. Inquiries relating to further prosecution should be directed to the Technology Center.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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WANG, HARTMANN & GIBBS
1301 DOVE STREET, SUITE 1050
NEWPORT BEACH, CA 92660

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SEP 14 2010

OFFICE OF PETITIONS

In re Application of
Jewel L. DOHAN
Application No. 11/540,447
Filed: September 28, 2006
Attorney Docket No. **D034-8000**

DECISION ON PETITION TO WITHDRAW FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed August 27, 2010.

The request is **NOT APPROVED**.

The request to withdraw as attorney/agent of record and change of correspondence address is hereby not accepted. Petitioner has not complied with current USPTO requirements, set forth in 37 CFR 10.40 concerning Request for Withdrawal as Attorney and Change of Correspondence Address. Specifically, pursuant to 37 CFR 10.40, the Office will require the practitioner(s) to certify that he, she or they have:

> **(1) given reasonable notice to the client, prior to the expiration of the reply period, that the practitioner(s) intends to withdraw from employment;**
>
> (2) delivered to the client or duly authorized representative of the client all papers and property (including funds) to which the client is entitled; and
>
> (3) notified the client of any replies that may be due and the time frame within which the client must respond.

Petitioner has not complied with the above certifications.

Further, the Office will only accept correspondence address changes to the most current address information provided for the assignee of the entire interest *who properly became of record under 37 CFR 3.71*, or if no assignee of the entire interest has properly been made of record, the most current address information provided for the first named inventor. 37 CFR 3.71 (c) states:

An assignee becomes of record either in a national patent application or a reexamination proceeding by filing a statement in compliance with § 3.73 (b) that is signed by a party who is authorized to act on behalf of the assignee.

The Office will also no longer change the correspondence address to that of a new practitioner unless the Request is accompanied by a power of attorney to a new practitioner (e.g., Form PTO/SB/82). All future communications from the Office will be directed to the above-listed address until otherwise properly notified by the applicant or a proper change of correspondence address has been submitted.

Telephone inquiries concerning this decision should be directed to the undersigned at 571-272- 7253. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

/Monica A. Graves/
Petitions Examiner, Office of Petitions

cc: **JEWEL L. DOHAN**
60 BAYCREST COURT
NEWPORT BEACH, CA 92660

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HONEYWELL/IFL
Patent Services
101 Columbia Road
P.O.Box 2245
Morristown NJ 07962-2245

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AUG 27 2010

OFFICE OF PETITIONS

In re Application of :
Hamilton, et al. :
Application No. 11/540,452 :
Filed: September 29, 2006 :
Atty Docket No. **H0012522.73100** :
(002.2085) :

DECISION ON APPLICATION FOR PATENT TERM ADJUSTMENT

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(b)" filed June 23, 2010. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from two hundred and sixty-four days (264) days to six hundred and sixty-nine (669) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PALM and PAIR screens to reflect that the Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is six hundred and sixty-nine **(669)** days. A copy of the updated PALM screen, showing the correct determination, is enclosed.

On March 29, 2010, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 264 days. On June 23, 2010, applicants timely submitted the instant application for patent term adjustment.[1] Applicants dispute the period of reduction of 405 days for the filing of an Information Disclosure Statement (IDS) on December 27, 2007.

[1] PALM records indicate that the issue fee payment was received on June 29, 2010.

Pursuant to 37 CFR 1.704(c)(8), the submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, is a failure to engage in reasonable efforts to conclude prosecution.

A review of the record reveals that the IDS was filed prior to the mailing of an Office action, and thus, prior to any reply to an Office action within the meaning of 37 CFR 1.704(c)(8) . The first Office action was mailed on September 28, 2009, with a reply thereto being filed thereafter. As such, the IDS filed December 27, 2007, was not filed as a supplemental paper within the meaning of 37 CFR 1.704(c)(8). A review of the application history further confirms that the IDS was not otherwise filed under circumstances that constitute a failure to engage in reasonable efforts to conclude prosecution. The period of reduction of 405 days entered for the IDS is not warranted and is being removed.

In view thereof, the patent term adjustment at the time of the mailing of the notice of allowance is 669 days.

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and Applicants will be notified in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

Submission of the $200.00 fee set forth in 37 C.F.R. § 1.18(e) is acknowledged. No additional fee is required.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. Mclaughlin
Petitions Attorney
Office of Petitions

Enclosure: Copy of updated PALM screen

PALM INTRANET

Day : Wednesday
Date: 8/25/2010
Time: 11:57:39

PTA Calculations for Application: 11/540452			
Application Filing Date:	09/29/2006	PTO Delay (PTO):	669
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	405
Post-Issue Petitions:	0	Total PTA (days):	669
PTO Delay Adjustment:	405		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
55	08/25/2010	ADJUSTMENT OF PTA CALCULATION BY PTO	405		
42	03/29/2010	MAIL NOTICE OF ALLOWANCE			
41	03/25/2010	ISSUE REVISION COMPLETED			
40	03/25/2010	DOCUMENT VERIFICATION			
39	03/25/2010	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
38	03/25/2010	NOTICE OF ALLOWABILITY			
37	12/21/2009	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
36	01/21/2010	DATE FORWARDED TO EXAMINER			
35	12/21/2009	RESPONSE AFTER NON-FINAL ACTION			
34	10/16/2009	CORRESPONDENCE ADDRESS CHANGE			
33	09/28/2009	MAIL NON-FINAL REJECTION	669		-1
32	09/24/2009	NON-FINAL REJECTION			
28	11/08/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
27	12/27/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
26	09/02/2009	CASE DOCKETED TO EXAMINER IN GAU			
25	05/05/2009	CASE DOCKETED TO EXAMINER IN GAU			
24	05/05/2009	DECISION MADE BY CLASSIFICATION DIVISION			
23	05/05/2009	REQUEST FOR CLASSIFICATION DIVISION DECISION			
22	04/28/2009	TRANSFER INQUIRY TO GAU			
21	04/16/2009	TRANSFER INQUIRY TO GAU			
20	05/08/2008	PG-PUB ISSUE NOTIFICATION			
19	12/27/2007	ELECTRONIC INFORMATION DISCLOSURE STATEMENT		405	14
18	12/27/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
17	12/05/2006	RECEIPT OF ALL ACKNOWLEDGEMENT LETTERS			
16	12/05/2006	RECEIPT OF ACKNOWLEDGMENT LETTER			
15	11/23/2006	CASE DOCKETED TO EXAMINER IN GAU			
14	11/17/2006	APPLICANT RESPONSE RECEIVED			
13	11/08/2006	REFERENCE CAPTURE ON IDS			
12.7	11/08/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
12	11/08/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
11	11/02/2006	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
10	11/02/2006	CASE DOCKETED TO EXAMINER IN GAU			
9	10/25/2006	REQUEST FOR APPLICANT STATEMENT REGARDING POTENTIAL NASA INTEREST (45-DAY LETTER) MAILED			
8	10/24/2006	APPLICATION DISPATCHED FROM OIPE			
7	10/25/2006	APPLICATION IS NOW COMPLETE			
6	10/20/2006	AGENCY REFERRAL LETTER MAILED			
5	10/19/2006	REFERRED FOR NASA PROPERTY RIGHTS REVIEW BY L&R LARS			
4	10/19/2006	REFERRED BY L&R FOR THIRD-LEVEL SECURITY REVIEW. AGENCY REFERRAL LETTER GENERATED			
3	10/11/2006	REFERRED TO LEVEL 2 (LARS) BY OIPE CSR			
2	10/06/2006	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	09/29/2006	INITIAL EXAM TEAM NN			

Search Another: Application# [ ] Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

To go back, right click here and select Back. To go forward, right click here and select Forward. To refresh, right click here and select Refresh.
Back to OASIS | Home page

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/540,505	10/02/2006	Alexei Shir	32730	1932

7590 09/23/2011

MARTIN D. MOYNIHAN d/b/a PRTSI, INC.
P.O. BOX 16446
ARLINGTON, VA 22215

EXAMINER	
ANGELL, JON E	

ART UNIT	PAPER NUMBER
1635	

MAIL DATE	DELIVERY MODE
09/23/2011	PAPER

ACKNOWLEDGEMENT OF REQUEST

Notice of Allowance/Allowability Mailed

The request to print a color drawing reference as the first paragraph in the portion of the specification containing a brief description of the drawings as required by 37 CFR 1.84 and MPEP § 608.02 has been received by the United States Patent and Trademark Office and will be entered into the specification.

571-272-4200 or 1-888-786-0101
Application Assistance Unit
Office of Data Management

FORM PTOM327-5 (Rev. 02/08)

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September 23, 2011

MARTIN D. MOYNIHAN d/b/a PRTSI, INC.
P.O. BOX 16446
ARLINGTON VA 22215

In re Application of	:	
Alexei Shir et al.	:	**DECISION ON PETITION**
Application No. 11540505	:	
Filed: 10/2/2006	:	***ACCEPTANCE OF COLOR***
Attorney Docket No. 32730	:	***DRAWINGS***

This is a decision on the Petition to Accept Color Drawings under 37 C.F.R 1.84 (a) (2), received in the United States Patent and Trademark Office (USPTO) October 2, 2006.

The petition is **GRANTED**.

A grantable petition under 37 C.F.R. 1.84(a) (2) must be accompanied by the following.

1. The fee set forth under 37 C.F.R. 1.17(h),
2. Three (3) sets of the color drawings in question, or (1) set if filed via EFS, and
3. The specification contains appropriate language referring to the color drawings as the first paragraph in that portion of the specification relating to the brief description of the drawings.

The petition was accompanied by all of the required fees and drawings. The specification contains the appropriate language. Therefore, the petition is GRANTED.

Telephone inquires relating to this decision may be directed to the undersigned in the Office of Data Management at 571-272-4200.

/Don Fairchild/
Office of Data Management
Publications Branch

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INTEL/BSTZ
BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP
1279 OAKMEAD PARKWAY
SUNNYVALE, CA 94085-4040

Mail Date: 08/02/2010

Applicant	: Tony V. Mule	: DECISION ON REQUEST FOR
Patent Number	: 7649264	: RECALCULATION of PATENT
Issue Date	: 01/19/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/540,528	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 09/28/2006	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **516** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

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600-700 MOUNTAIN AVENUE
MURRAY HILL, NJ 07974

MAILED
JUL 28 2011
OFFICE OF PETITIONS

In re Application of :
Sarvar PATEL :
Application No. 11/540,790 : DECISION ON PETITION
Filed: September 29, 2006 : UNDER 37 CFR 1.137(b)
Attorney Docket No. **29** :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 31, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of June 23, 2010. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is September 24, 2010.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $810, and the submission required by 37 CFR 1.114; (2) the petition fee of $1620; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to Monica A. Graves at (571) 272-7253.

There is no indication that the person signing the petition was ever given a power of attorney to prosecute the application. If the person signing the petition desires to receive future correspondence regarding this application, the appropriate power of attorney document must be submitted.

This application is being referred to Technology Center AU 2431 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

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AND POPEO, P.C
ONE FINANCIAL CENTER
BOSTON MA 02111

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SEP 20 2010

OFFICE OF PETITIONS

In re Application of
Feyzi Celik
Application No. 11/540,820
Filed: September 28, 2006
Attorney Docket No. 8358-017 C1P

: DECISION ON APPLICATION
: FOR PATENT ADJUSTMENT

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R, § 1.705(b)filed October 16, 2009 and resubmitted on March 16, 2010. Applicant requests that the determination of patent term adjustment be corrected from 297 days to 236 days.

The request for correction of the initial determination of patent term adjustment (PTA) is **GRANTED to the extent indicated.** The PTA at the time of the mailing of the notice of allowance is 220 days.

On September 1, 2009, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 297 days. After payment of the issue fee on October 16, 2009, a petition to withdraw the application from issue was filed on December 2, 2009. The petition was granted on December 4, 2009 and the issue fee refunded. A Notice of Allowance was subsequently mailed December 16, 2009 which also stated that the patent term adjustment to date is 297 days. The instant application for patent term adjustment was timely filed on or before payment of the issue fee.[1]

With respect to the patent term adjustment at the time of the mailing of the notice of allowance, applicants acknowledge the period of adjustment of 377 days for Office delay pursuant to 37 CFR 1.702(a)(1) and 80 days applicant delay.

Applicants argue however, that 77 days of delay should be attributed under 35 U.S.C § 154(b)(2)(C) for the Supplemental Information Disclosure Statement filed on August 13, 2009.

---

[1] A subsequent petition to withdraw the application from issue was filed on June 18, 2010. The petition was granted on June 21, 2010.

Applicant's argument is persuasive. A period of reduction should be entered for the Supplemental Information Disclosure Statement (IDS) filed August 13, 2009. The period of reduction pursuant to 37 CFR 1.704(c)(8) for filing the Supplemental IDS without a 1.704(d) statement and which was not expressly requested by the examiner, after the filing of the response on May 28, 2009, counting the number of days in the period beginning on the day after the initial reply was filed, May 28, 2009 and ending on the date of filing of the last supplemental paper, the IDS filed August 13, 2009. Accordingly, an additional period of reduction of 77 days is being entered.

37 CFR 1.704(c)(8) provides that:

> the submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed;

Applicants further submit that the Office mailed a Supplemental Notice of Allowability October 14, 2009 16 days after the date that is four months of the filing of the reply filed May 28, 2009 under 35 U.S.C. § 132. Therefore, Applicants submit there should be an additional 16 days of Office delay due to this mailing.

Applicant's argument is not persuasive. 37 CFR 1.702(a)(2) provides that: Failure to take certain actions within specified time frames. Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to:

> Respond to a reply under 35 U.S.C. 132 or to an appeal taken under 35 U.S.C. 134 not later than four months after the date on which the reply was filed or the appeal was taken.

In this instance, the Office action mailed August 28, 2009 was mailed in response to and within four months of receipt of applicant's response filed May 28, 2009. The fact that the Office subsequently mailed a further Office action, a Substitute Notice of Allowability on October 14, 2009 does not negate the fact that the Office took action within the meaning of 37 CFR 1.702(a)(2) on August 28, 2009. Accordingly, entry of an additional period of adjustment of 16 days for examination delay pursuant to 37 CFR 1.702(a)(2) is not warranted.

In view thereof, the patent term adjustment at the time of mailing of the notice of allowance is 220 days.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The Office of Data Management has been advised of this decision. The application is, thereby, forwarded to the Office of Data Management for issuance of the application. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212.

Anthony Knight
Director
Office of Petitions

Enclosure: Copy of Revised PALM Screen

Patent Term Adjustments

PTA/PTE Information | Patent Term Adjustment | Patent Term Extension

Application Number*: 11540320 Search Explanation of PTA Calculation Explanation of PTE Calculation

PTA Calculations for Application: 11540820

Application Filing Date	09/28/2006	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays:	377
A Delays	377	PTO Manual Adjustment	-61
B Delays	0	Applicant Delay (APPL)	80
C Delays	0	Total PTA (days)	236

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
161	09/19/2010		P028	Adjustment of PTA Calculation by PTO		61	0
149	07/09/2010		MN/=.	Mail Notice of Allowance			0
148	07/06/2010		IREV	Issue Revision Completed			0
147	07/06/2010		DVER	Document Verification			0
146	07/06/2010		N/=.	Notice of Allowance Data Verification Completed			0
145	07/06/2010		CNTA	Notice of Allowability			0
138	06/25/2010		ABN9	Disposal for a RCE / CPA / R129			0
137	06/21/2010		MP006	Mail-Record Petition Decision of Granted to Withdraw from Issue			0
136	06/21/2010		P006	Record Petition Decision of Granted to Withdraw from Issue			0
142	06/18/2010		IDSC	Information Disclosure Statement considered			0
141	06/18/2010		RCAP	Reference capture on IDS			0
140	06/18/2010		M844	Information Disclosure Statement (IDS) Filed			0
139	06/18/2010		RCEX	Request for Continued Examination (RCE)			0
135	06/18/2010		WIDS	Information Disclosure Statement (IDS) Filed			0
134	06/18/2010		PET.	Petition Entered			0
133	06/18/2010		BRCE	Workflow - Request for RCE - Begin			0
132	03/16/2010		PET.	Petition Entered			0
131	03/16/2010		N084	Issue Fee Payment Verified			0
130	03/16/2010		IFEE	Issue Fee Payment Received			0
128	12/25/2009		EIDC	Export to Initial Data Capture			0
117	12/18/2009		ABN9	Disposal for a RCE / CPA / R129			0
123	12/16/2009		MN/=.	Mail Notice of Allowance			0
122	12/14/2009		N/=.	Notice of Allowance Data Verification Completed			0
119	12/14/2009		CNTA	Notice of Allowability			0
110	12/04/2009		MP006	Mail-Record Petition Decision of Granted to Withdraw from Issue			0
109	12/04/2009		P006	Record Petition Decision of Granted to Withdraw from Issue			0
127	12/02/2009		RCAP	Reference capture on IDS			0
126	12/02/2009		M844	Information Disclosure Statement (IDS) Filed			0
121	12/02/2009		IREV	Issue Revision Completed			0
120	12/02/2009		DVER	Document Verification			0
118	12/02/2009		RCEX	Request for Continued Examination (RCE)			0
111	12/02/2009		IDSC	Information Disclosure Statement considered			0
108	12/02/2009		WIDS	Information Disclosure Statement (IDS) Filed			0
107	12/02/2009		PET.	Petition Entered			0
105	12/02/2009		BRCE	Workflow - Request for RCE - Begin			0
104	11/10/2009		FIDC	Finished Initial Data Capture			0
103	11/10/2009		DRWF	Workflow - Drawings Finished			0
102	11/10/2009		QURF	Workflow - Query Request - Finish			0
101	11/05/2009		TCPUB	TC Return to Pubs			0
100	11/05/2009		MM327	Mail Miscellaneous Communication to Applicant			0
99	11/05/2009		M327	Miscellaneous Communication to Applicant - No Action Count			0
98	10/26/2009		QURI	Workflow - Query Request - Begin			0
97	10/22/2009		PILS	Application Is Considered Ready for Issue			0
129	10/16/2009		VFEE	Reverse Issue Fee			0
96	10/16/2009		REAS	Response to Reasons for Allowance			0
95	10/16/2009		N084	Issue Fee Payment Verified			0
93	10/16/2009		IFEE	Issue Fee Payment Received			0
92	10/15/2009		QURF	Workflow - Query Request - Finish			0
91	10/14/2009		TCPUB	TC Return to Pubs			0
90	10/14/2009		MM327	Mail Miscellaneous Communication to Applicant			0
94	10/13/2009		PET.	Petition Entered			0
89	10/13/2009		M327	Miscellaneous Communication to Applicant - No Action Count			0
87	09/23/2009		QURI	Workflow - Query Request - Begin			0
88	09/16/2009		PUBTC	Pubs Case Remand to TC			0
86	09/04/2009		EIDC	Export to Initial Data Capture			0
85	09/01/2009		MN/=.	Mail Notice of Allowance			0
78	08/29/2009		IREV	Issue Revision Completed			0
70	08/28/2009		ACRE	Allowed Case Returned to the Examiner for Clerical Processing			0
69	08/28/2009		DVER	Document Verification			0
68	08/28/2009		N/=.	Notice of Allowance Data Verification Completed			0
67	08/28/2009		CNTA	Notice of Allowability			0
125	08/13/2009		RCAP	Reference capture on IDS			0
124	08/13/2009		M844	Information Disclosure Statement (IDS) Filed			0
64	08/13/2009		IDSC	Information Disclosure Statement considered			0
60	08/13/2009		WIDS	Information Disclosure Statement (IDS) Filed			0
58	06/18/2009		FWDX	Date Forwarded to Examiner			0
59	05/28/2009		C614	New or Additional Drawing Filed			0
57	05/28/2009	03/09/2009	A...	Response after Non-Final Action		80	44
56	05/28/2009		XT/G	Request for Extension of Time - Granted			0
63	04/16/2009		IDSC	Information Disclosure Statement considered			0
55	04/16/2009		RCAP	Reference capture on IDS			0
54	04/16/2009		M844	Information Disclosure Statement (IDS) Filed			0
52	04/16/2009		WIDS	Information Disclosure Statement (IDS) Filed			0
51	01/23/2009		C.AD	Correspondence Address Change			0
50	01/22/2009		DOCK	Case Docketed to Examiner in GAU			0
84	12/09/2008		IDSC	Information Disclosure Statement considered			0
83	12/09/2008		IDSC	Information Disclosure Statement considered			0
82	12/09/2008		IDSC	Information Disclosure Statement considered			0
81	12/09/2008		IDSC	Information Disclosure Statement considered			0
80	12/09/2008		IDSC	Information Disclosure Statement considered			0
79	12/09/2008		IDSC	Information Disclosure Statement considered			0
77	12/09/2008		WIDS	Information Disclosure Statement (IDS) Filed			0
76	12/09/2008		WIDS	Information Disclosure Statement (IDS) Filed			0
75	12/09/2008		WIDS	Information Disclosure Statement (IDS) Filed			0
74	12/09/2008		WIDS	Information Disclosure Statement (IDS) Filed			0
73	12/09/2008		WIDS	Information Disclosure Statement (IDS) Filed			0
72	12/09/2008		WIDS	Information Disclosure Statement (IDS) Filed			0
71	12/09/2008		IDSC	Information Disclosure Statement considered			0
49	12/09/2008		RCAP	Reference capture on IDS			0
48	12/09/2008		M844	Information Disclosure Statement (IDS) Filed			0

45	12/09/2008		WIDS	Information Disclosure Statement (IDS) Filed			0
44	12/09/2008	11/28/2007	MCTNF	Mail Non-Final Rejection	377		-1
42	11/24/2008		CTNF	Non-Final Rejection			0
61	11/18/2008		IDSC	Information Disclosure Statement considered			0
47	11/18/2008		RCAP	Reference capture on IDS			0
46	11/18/2008		M844	Information Disclosure Statement (IDS) Filed			0
43	11/18/2008		WIDS	Information Disclosure Statement (IDS) Filed			0
30	09/22/2008		DOCK	Case Docketed to Examiner in GAU			0
38	09/02/2008		IDSC	Information Disclosure Statement considered			0
32	09/02/2008		RCAP	Reference capture on IDS			0
31	09/02/2008		M844	Information Disclosure Statement (IDS) Filed			0
28	09/02/2008		WIDS	Information Disclosure Statement (IDS) Filed			0
37	05/27/2008		IDSC	Information Disclosure Statement considered			0
25	05/27/2008		RCAP	Reference capture on IDS			0
24	05/27/2008		M844	Information Disclosure Statement (IDS) Filed			0
21	05/27/2008		WIDS	Information Disclosure Statement (IDS) Filed			0
19	05/19/2008		DOCK	Case Docketed to Examiner in GAU			0
36	05/13/2008		IDSC	Information Disclosure Statement considered			0
23	05/13/2008		RCAP	Reference capture on IDS			0
22	05/13/2008		M844	Information Disclosure Statement (IDS) Filed			0
20	05/13/2008		WIDS	Information Disclosure Statement (IDS) Filed			0
35	04/17/2008		IDSC	Information Disclosure Statement considered			0
18	04/17/2008		EIDS	Electronic Information Disclosure Statement			0
17	04/17/2008		WIDS	Information Disclosure Statement (IDS) Filed			0
34	07/06/2007		IDSC	Information Disclosure Statement considered			0
16	07/06/2007		RCAP	Reference capture on IDS			0
15	07/06/2007		M844	Information Disclosure Statement (IDS) Filed			0
14	07/06/2007		WIDS	Information Disclosure Statement (IDS) Filed			0
13	07/02/2007		LET.	Miscellaneous Incoming Letter			0
33	04/23/2007		IDSC	Information Disclosure Statement considered			0
12	04/23/2007		RCAP	Reference capture on IDS			0
11.7	04/23/2007		M844	Information Disclosure Statement (IDS) Filed			0
11	04/23/2007		WIDS	Information Disclosure Statement (IDS) Filed			0
10	01/25/2007		PG-ISSUE	PG-Pub Issue Notification			0
9	12/06/2006		DOCK	Case Docketed to Examiner in GAU			0
8	10/24/2006		TSSCOMP	IFW TSS Processing by Tech Center Complete			0
7	10/19/2006		WRDIPE	Application Return from OIPE			0
6	10/19/2006		RDIPE	Application Return TO OIPE			0
4	10/19/2006		COMP	Application is Now Complete			0
5	10/18/2006		OIPE	Application Dispatched from OIPE			0
3	10/11/2006		LL94	Cleared by OIPE CSR			0
2	10/06/2006		SCAN	IFW Scan & PACR Auto Security Review			0
1	09/28/2006		IEXX	Initial Exam Team nn			0

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MAR 23 2012

OFFICE OF PETITIONS

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C
ONE FINANCIAL CENTER
BOSTON MA 02111

In re Patent No. 7,836,011	: DECISION DISMISSING PETITION
Issue Date: November 16, 2010	: UNDER 37 CFR 1.78(a)(3) AND
Application No. 11/540,820	: REQUEST FOR CERTIFICATE OF
Filed: September 28, 2006	: CORRECTION
Attorney Docket No. 18358-017	:

This is a decision on the petition, filed February 22, 2012, which is being treated as a petition under 37 CFR 1.78(a)(3), seeking to add a claim for priority under 35 U.S.C. § 120 to nonprovisional Application No. 10/123,788, filed April 16, 2002, by way of a certificate of correction.

The petition is **dismissed**.

A review of the file record fails to disclose that a claim for the benefit of priority to the above-noted, prior-filed nonprovisional application was made within the time period set forth in 37 CFR 1.78(a)(2)(ii) and further failed to include a proper reference to the prior-filed application as required by 37 CFR 1.78(a)(2)(i) and 1.78(a)(2)(iii).

The instant application was filed September 28, 2006. Therefore, since this application was filed after November 29, 2000, a petition under 37 CFR 1.78(a)(3), along with submission of a Certificate of Correction, is the appropriate avenue of relief to accept a late claim for the benefit of priority to a prior-filed nonprovisional application after issuance of the application into a patent. *See* MPEP 1481.

The Office notes:

Where priority is based upon 35 U.S.C. 120 to a national application, the following conditions must be satisfied:

(A) all requirements set forth in 37 CFR 1.78(a)(1) must have been met in the application which became the patent to be corrected;

(B) it must be clear from the record of the patent and the parent application(s) that priority is appropriate (see MPEP § 201.11); and

(C) a grantable petition to accept an unintentionally delayed claim for the benefit of a prior application must be filed, including a surcharge as set forth in 37 CFR 1.17(t), as required by 37 CFR 1.78(a)(3).

MPEP 1481.03(II)(B) .

If all the above-stated conditions are satisfied, a Certificate of Correction can be used to add or correct a claim under 35 U.S.C. 120 for benefit of a prior-filed nonprovisional application.

In this instance, petitioner has not satisfied condition (C) above because he did not submit a grantable petition under 37 CFR 1.78(a)(3).

A petition for acceptance of an unintentionally delayed claim under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. 120 and 37 CFR 1.78(a)(2)(i) and (iii) to the prior-filed application (unless previously submitted);

(2) the surcharge set forth in 37 CFR 1.17(t); and

(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) 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.

The petition fails to comply with item (1) above.

The petition must be dismissed because the reference required by 35 U.S.C. 120 and 37 CFR 1.78(a)(2)(i) has not be properly supplied. Specifically, petitioner did not submit the reference in compliance with 37 CFR 1.78(a) by filing an amendment to the first sentence(s) of the specification or in a ADS. Pursuant to 37 CFR 1.78(a)(2)(iii), the reference to the prior-filed nonprovisional application must be included in an application data sheet (§ 1.76) or the specification must contain or be amended to contain such reference in the first sentence(s) following the title. Additionally, the Office notes that the Certificate of Correction form submitted on February 22, 2012, requested correction of the first paragraph of the specification, but not the front page, of the Letters Patent.

Also, the status of each nonprovisional parent application (if it is patented or abandoned) should also be indicated, following the filing date of the parent nonprovisional application. See MPEP Section 201.11, Reference to Prior Nonprovisional Applications.

In addition, Application No. 10/657,757 does not contain a reference indicating that it is a continuation of Application No. 10/123,788, filed on April 15, 2002. A petition under 37 CFR 1.78(a)(3) was filed in Application No. 10/657,757 on February 22, 2012 and dismissed on March 21, 2012. Until an appropriate reference is entered in Application No. 10/657,757, the

desired change cannot be entered in the subject application. In other words, appropriate references must be present in each intermediate application in the chain of prior applications.

The following must occur to effectuate the desired changes:

(1) Petitioner must file a renewed petition in Application No. 10/657,757 to add a delayed benefit claim to Application No. 10/123,788 and the petition must be granted. [Please review the petition decision in Application No. 10/657,757, mailed March 21, 2012 for further explanation.] &

(2) Petitioner must file a renewed petition under 37 CFR 1.78(a)(3), accompanied by either a ADS or an amendment to the specification listing the status of each nonprovisional parent application and adding the new benefit claim.[1] Additionally, petitioner must submit a completed Certificate of Correction form listing the status of each nonprovisional parent application and adding the new reference to the prior-filed nonprovisional application on both the front page and the first paragraph of the specification of the Letters Patent. The text of the correction, as well as the location of the error in the printed patent should be identified on form PTO/SB/44 by column and line number.

The Office acknowledges receipt of the $1,410 surcharge fee, as well as the $100 certificate of correction fee. No additional fees will be required when the renewed petition and certificate of correction are filed.

Further correspondence with respect to this matter should be addressed as follows:

By mail:
Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand:
Customer Service Window
Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax:
(571) 273-8300
ATTN: Office of Petitions

[1] The Office notes that 37 CFR 1.33(b) requires that amendments and other papers, except for written assertions pursuant to 37 CFR 1.27(c)(2)(ii), filed in an application must be signed by an appropriate party. Therefore, any ADS or amendment submitted on renewed petition must be signed in accordance with 37 CFR 1.33(b).

By internet: EFS-Web
www.uspto.gov/ebc/efs_help.html
(for help using EFS-Web call the
Patent Electronic Business Center
at (866) 217-9197)

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

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MICHAEL J. CHERSKOV
123 WEST MADISON STREET
SUITE 400
CHICAGO IL 60602

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JUN 03 2011

OFFICE OF PETITIONS

In re Application of

Cappello, et al. :

Application No. 11/540,918 : DECISION ON PETITION

Filed: September 29, 2006 :

Attorney Docket No. 0256/01662

This is a decision on the petition under 37 CFR 1.137(b), filed May 17, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The above-cited application became abandoned for failure to reply in a timely manner to the non-final Office action mailed November 19, 2009, which set a shortened statutory period for reply of three (3) months from its mailing date. No extension of time pursuant to 37 CFR 1.136(a) was obtained within the allowable period. Accordingly, the application became abandoned on February 20, 2010. A Notice of Abandonment was mailed May 27, 2010.

The amendment filed May 17, 2010, is noted.

The application is being forwarded to Technology Center 2600, GAU 2627 for further processing.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

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Paper No.

WIN SEMICONDUCTORS CORP.
NO. 69, TECHNOLOGY 7TH RD.
HWAYA TECHNOLOGY PARK
KUEI SHAN HSIANG
TAO YUAN SHIEN, TAIWAN
R.O.C.

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AUG 15 2011
OFFICE OF PETITIONS

In re Patent No. 7,679,870 :
Lin et al. :
Issued: March 16, 2010 :
Application No. 11/540,974 : LETTER REGARDING
Filed: October 2, 2006 : FEE DEFICIENCY PAYMENT
Atty Docket No. BHT/3214-201 :

This is in response to the "NOTIFICATION OF ERRONEOUS PAYMENT OF SMALL ENTITY FEES UNDER 37 C.F.R. § 1.28" filed July 15, 2011, which is properly treated as a notification of loss of entitlement to small entity status.

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

This letter includes an itemization of the fee deficiencies and payment as required by 37 CFR 1.28(c)(2)(ii).

Your notification of a loss of entitlement to small entity status is made of record and your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

The correspondence address and agent of record are to a practitioner voluntarily not active as to the prosecution of applications before the USPTO. This decision is being sent to the assignee of record with a courtesy copy to the practitioner who filed this paper. All future correspondence will be sent to the correspondence address of record until such time a proper change of address is filed.

Telephone inquiries related to this decision should be directed to the undersigned at 571-272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

CC: MUNCY, GEISSLER, OLDS & LOWE, PLLC
4000 Legato Road
Suite 310
Fairfax VA 22033

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DENTSPLY INTERNATIONAL INC
570 WEST COLLEGE AVENUE
YORK PA 17404

In re Application of :
Thomas C. Simonton et al. :
Application No. 11/541,065 : ON PETITION
Filed: September 29, 2006 :
Attorney Docket No. **DPD-128** :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 4, 2010, to revive the above-identified application.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, April 29, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on July 30, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a continuing application under 37 CFR 1.53(b); (2) the petition fee of $1,620; and (3) a proper statement of unintentional delay.

The petition is hereby **GRANTED**.

This application is being revived solely for purposes of continuity. As continuity has been established by this decision, the application is again abandoned in favor of continuing Application No. 12/939,342.

Telephone inquiries concerning this decision should be directed to JoAnne Burke at (571) 272-4584.

JoAnne Burke
Petitions Examiner
Office of Petitions

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JAN 19 2011

OFFICE OF PETITIONS

Law Offices of Daniel L. Dawes
Dawes Patent Law Group
5200 Warner Blvd, Ste. 106
Huntington Beach CA 92649

In re Application of :
Jesper E. Eklund, et al. :
Application No. 11/541,073 : ON PETITION
Filed: September 29, 2006 :
Attorney Docket No. UC1.PAU.80 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 17, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of December 17, 2009. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is March 18, 2010. The Notice of Abandonment was mailed November 19, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $810, and the submission required by 37 CFR 1.114; (2) the petition fee of $405; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-2991.

This application is being referred to Technology Center AU 2823 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

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BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP
1279 OAKMEAD PARKWAY
SUNNYVALE, CA 94085-4040

Mail Date: 08/04/2010

Applicant	: Chunfei Ye	: DECISION ON REQUEST FOR
Patent Number	: 7649265	: RECALCULATION of PATENT
Issue Date	: 01/19/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/541,124	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 09/29/2006	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **131** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

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c/o CPA Global
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MINNEAPOLIS MN 55402

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OFFICE OF PETITIONS

In re Application of	:	
Licht et al.	:	
Application No. 11/541174	:	
Filing or 371(c) Date: 09/29/2006	:	ON PETITION
Attorney Docket Number:	:	
P24383	:	

This is a decision on the Petition under 37 CFR 1.137(b), filed January 12, 2012, to revive the above-identified application.

The petition is granted.

The above-identified application became abandoned for failure to timely and properly reply to the non-final Office action, mailed November 26, 2008. The Office action set a three (3) month period for reply from the mail date of the Office action. Extensions of time were available under 37 CFR 1.136(a). No complete and proper reply having been received, the application became abandoned on February 27, 2009.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an Amendment is filed with the present petition; (2) the petition fee; and (3) the required statement of unintentional delay. Accordingly, the reply is accepted as having been unintentionally delayed.

This application is being referred to Technology Center Art Unit 2187 for processing of the Amendment filed with the petition in the normal course of business.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

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Swiss Tanner, P.C.
P.O. Box 1749
Four Main Street, Suite 100
Los Altos, CA 94022

Mail Date: 09/14/2010

Applicant	: Christopher Michael Semko	: DECISION ON REQUEST FOR
Patent Number	: 7727996	: RECALCULATION of PATENT
Issue Date	: 06/01/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/541,205	: OF WYETH
Filed	: 09/28/2006	:
		:

The Patentee's Request for Recalculation is **DISMISSED.**

This Request is deemed ineligible for consideration for one or more of the following reasons:

(A). The patent for which PTA recalculation is requested is either a design or reissue application or is a reexamination proceeding;

(B). The patent for which PTA recalculation is requested resulted from a utility or plant application filed under 35 USC 111(a) before May 29, 2000 and no CPA filed in the application on/after May 29, 2000;

(C). The patent for which PTA recalculation is requested resulted from an international application in which the international filing date was before May 29, 2000 and no CPA filed in the application on/after May 29, 2000;

(D). The patent for which PTA recalculation is requested issued on/after March 2, 2010;

(E). The Request for Recalculation was filed more than 180 days after the grant date of the patent and the request was not filed within two months of a dismissal of a request for reconsideration of the of the patent term under 37 CFR 1.705(d);

(F). The Request for Recalculation is not solely limited to USPTO pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A);

or

(G). A civil action was filed pursuant to 35 U.S.C. 154(b)(4)(A)concerning the same patent at issue in this request.

Patentee may file a reply to this decision dismissing the Request for Recalculation. Patentee must file such reply within one month or thirty days, whichever is longer, of the mail date of the decision dismissing the Request for Recalculation. No fee is required if patentee is asserting in the reply that the dismissal for ineligibility is improper.

Patentee should use document code PET.OP if electronically filing a reply to this dismissal. If the USPTO finds that the request was improperly deemed ineligible, the USPTO will mail applicant a recalculation determination.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A). Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154 (b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

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FISH & RICHARDSON P.C.
P.O. Box 1022
MINNEAPOLIS MN 55440-1022

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OFFICE OF PETITIONS

In re Patent No. 7,868,888
Dowling et al.
Issue Date: January 11, 2011
Application No. 11/541,219
Filed: September 29, 2006
Attorney Docket No. 07844-706002/P654
Title: Course Grid Aligned Counters

: DECISION ON REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT

This is a decision on the petition filed on March 10, 2011, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by five hundred ninety-three (593) days.

The request for reconsideration of the patent term adjustment (PTA) pursuant to 37 CFR 1.705(d) is **DISMISSED**.

The above-identified application matured into U.S. Pat. No. 7,868,888 on January 11, 2011. The patent issued with a patent term adjustment of 490 days. The instant application for patent term adjustment was timely filed in accordance with 37 CFR 1.705(d). Patentees contest the period of adjustment of 42 days accorded pursuant to 37 CFR 1.702(b) and assert that the correct period of adjustment under 37 CFR 1.702(b) is 145 days.

Petitioner's arguments have been carefully considered, but are not persuasive. The period of adjustment pursuant to 37 CFR 1.702(b) was properly calculated at 42 days.

35 USC 154(b)(1)(B) states in relevant part:

Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United

States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including – (i) any time consumed by continued examination of the application requested by the applicant under section 132(b).

37 CFR 1.702(b) states in relevant part:

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including: (1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b).

37 CFR 1.703(b) states in relevant part:

The period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the sum of the following periods: (1) The number of days, if any, in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

Counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentee does not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is time consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the

final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56365, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

In view thereof, no adjustment to the patent term will be made.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3215.

Charlema Grant
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
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ORGANON USA, INC.
c/o MERCK
2000 Galloping Hill Road
Mail Stop: K-6-1, 1990
Kenilworth NJ 07033

MAILED
DEC 07 2010
OFFICE OF PETITIONS

In re Application of	:	
Susan Elizabeth Napier, et al.	:	
Application No. 11/541,273	:	DECISION ON PETITION
Filed: September 29, 2006	:	
Attorney Docket No. 2005.912US	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 8, 2010, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before August 13, 2010, as required by the Notice of Allowance and Fee(s) Due, mailed May 13, 2010. Accordingly, the date of abandonment of this application is August 14, 2010. The Notice of Abandonment was mailed September 1, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1,510 and the publication fee of $300, (2) the petition fee of $1,620; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to Terri Johnson at (571) 272-2991

This application is being referred to the Office of Data Management for processing into a patent.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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NOV 23 2010

PCT LEGAL ADMINISTRATION

LAW OFFICE OF JOHN C. MCMAHON
P.O. BOX 30069
KANSAS CITY MO 64112

In re Application of	:	
PIVEL RANIERI, Juan Pablo, et al.	:	
Application No.: 11/541,350	:	DECISION ON
PCT No.: PCT/ES2004/000149	:	
Int. Filing Date: 1 April 2004	:	REQUEST
Priority Date: None	:	
Att. Docket No.: 10,675	:	UNDER 37 CFR 1.42
For: PHOTOPROTECTOR AND/OR ...	:	
AND THEIR USES	:	

This decision responds to applicants' submission of a declaration of the inventors on 29 September 2006, containing an indication that joint inventor Madhukar A. Pathak is deceased. The declaration has been treated as a request for status under 37 CFR 1.42.

BACKGROUND

On 29 September 2006, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee and a declaration of the inventors.

DISCUSSION

Under 35 U.S.C. §117, legal representatives of deceased inventors may make application for patent upon compliance with the requirements and on the same terms and conditions applicable to the inventor. The "legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent." 37 C.F.R. 1.42.

Applicants have not located a legal representative for the deceased inventor Pathak. The declaration does not state the inventors and their citizenships and the legal representative and the legal representative's citizenship, residence and mailing address. 37 CFR 1.497(b). Applicant states that the other inventors are unfamiliar with the heirs or legal representative of the deceased. Mr. Pathak, according the declaration, was a resident of Belmont, Massachusetts. Inquiry of the appropriate probate court would be in order. If a legal representative was appointed, but has since been discharged, a legal representative must be reappointed. MPEP 409.01(c).

CONCLUSION

For the above reasons, the request for status under 37 CFR 1.42 is **REFUSED**.

Applicants are required to submit an oath or declaration in compliance with 37 C.F.R. 1.497 and 1.42 within a time period of **TWO (2) MONTHS** from the mail date of this Decision. THIS PERIOD FOR RESPONSE MAY BE EXTENDED UNDER 37 C.F.R. 1.136(a). FAILURE TO PROPERLY RESPOND WILL RESULT IN ABANDONMENT. Any request for reconsideration of this decision should include a cover letter entitled "Renewed Submission Under 37 CFR 1.42."

Any further correspondence with respect to this matter may be filed electronically via EFS-Web selecting the document description "Petition for review and processing by the PCT Legal Office" or by mail addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

/Erin P. Thomson/

Erin P. Thomson
Attorney Advisor
PCT Legal Administration

Telephone: 571-272-3292

UNITED STATES PATENT AND TRADEMARK OFFICE

MAILED

JUN 03 2011

PCT LEGAL ADMINISTRATION

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
www.uspto.gov

LAW OFFICE OF JOHN C. MCMAHON
P.O. BOX 30069
KANSAS CITY MO 64112

In re Application of :
PIVEL RANIERI, Juan Pablo, et al. :
Application No.: 11/541,350 : DECISION ON
PCT No.: PCT/ES2004/000149 :
Int. Filing Date: 1 April 2004 : REQUEST
Priority Date: None :
Att. Docket No.: 10,675 : UNDER 37 CFR 1.42
For: PHOTOPROTECTOR AND/OR ... :
AND THEIR USES :

This decision responds to applicants' petition to reconsider declaration of the inventors on 28 March 2011.

BACKGROUND

On 29 September 2006, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee and a declaration of the inventors. The declaration indicated that a joint inventor was deceased.

On 23 November 2010, the Office mailed Decision On Request indicating that the declaration did not comply with 37 CFR 1.497(b) and refusing the request for status under 37 CFR 1.42.

On 28 March 2011, applicants filed this request saying that the application has been amended to remove the claims for which the deceased inventor was an inventor and to request that we accept the earlier declaration that lists the deceased inventor, but is not executed by him.

DISCUSSION

This application has not yet satisfied the requirements of 35 USC 371 for entry into the national phase in the United States. Those requirements include a declaration by the inventors in the international application. The inventors include those in the filed PCT and any changes made under PCT Rule 92*bis* prior to 30 months from the priority date. 37 CFR 1.41(a)(4). As such, the inventorship remains as it was at 30 months from the priority date. A declaration in compliance with 37 CFR 1.497(a)-(b) is required.

CONCLUSION

For the above reasons, the petition to accept the 29 September 2006 declaration is **DISMISSED** without prejudice.

Applicants are required to submit an oath or declaration in compliance with 37 C.F.R. 1.497 and 1.42 within a time period of **TWO (2) MONTHS** from the mail date of this Decision. THIS PERIOD FOR RESPONSE MAY BE EXTENDED UNDER 37 C.F.R. 1.136(a). FAILURE TO PROPERLY RESPOND WILL RESULT IN ABANDONMENT. Any request for reconsideration of this decision should include a cover letter entitled "Renewed Submission Under 37 CFR 1.42."

Any further correspondence with respect to this matter may be filed electronically via EFS-Web selecting the document description "Petition for review and processing by the PCT Legal Office" or by mail addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

/Erin P. Thomson/

Erin P. Thomson
Attorney Advisor
PCT Legal Administration

Telephone: 571-272-3292

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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LEE & HAYES, PLLC
601 W RIVERSIDE
SUITE 1400
SPOKANE, WA 99201

MAILED

MAR 14 2011

OFFICE OF PETITIONS

In re Application of	:	
JUNG, et al	:	
Application No. 11/541,377	:	DECISION ON PETITION
Filed: September 29, 2006	:	TO WITHDRAW
Attorney Docket No. QQ1-0041US	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed January 25, 2011.

The request is **NOT APPROVED.**

The request to withdraw from record cannot be approved because the request to change the correspondence address is not accompanied by a power of attorney nor is the correspondence address that of an assignee of the entire interest who has been properly made of record under 37 CFR 3.71 or the first named inventor.

All future communications from the Office will continue to be directed to the above-identified address until otherwise properly notified.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

cc: MARGARET ANDERSON
106 E. 6TH STREET, SUITE 900
AUSTIN TX 78701

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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LEE & HAYES, PLLC
601 W RIVERSIDE
SUITE 1400
SPOKANE, WA 99201

MAILED

MAR 14 2011

OFFICE OF PETITIONS

In re Application of	:	
JUNG, et al	:	
Application No. 11/541,378	:	DECISION ON PETITION
Filed: September 29, 2006	:	TO WITHDRAW
Attorney Docket No. QQ1-0045US	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed January 25, 2011.

The request is **NOT APPROVED.**

The request to withdraw from record cannot be approved because the request to change the correspondence address is not accompanied by a power of attorney nor is the correspondence address that of an assignee of the entire interest who has been properly made of record under 37 CFR 3.71 or the first named inventor.

All future communications from the Office will continue to be directed to the above-identified address until otherwise properly notified.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

cc: MARGARET ANDERSON
106 E. 6TH STREET, SUITE 900
AUSTIN TX 78701

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Margaret Anderson
106 E. 6th Street, Suite 900
Austin, TX 78701

MAILED

APR 11 2011

OFFICE OF PETITIONS

In re Application of :
Edward K.Y. Jung, et. al. :
Application No. 11/541,382 :
Filed: September 27, 2006 :
Attorney Docket No. QQ1-0135US :

DECISION ON PETITION
TO WITHDRAW FROM
RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 CFR §§ 1.36(b) or 10.40 filed January 27, 2011.

The request is **MOOT**.

A review of the file record indicates that any previous power of attorney was revoked on January 31, 2011. Accordingly, the request to withdraw under 37 CFR §§ 1.36(b) or 10.40 is unnecessary.

All future communications from the Office will be directed to the above-listed address of record until otherwise notified by applicant.

This application file is being referred to Technology Center 2400 for further processing, based on the response filed November 15, 2010.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

cc: Lee & Hayes, PLLC
601 W Riverside
Suite 1400
Spokane, WA 99201

UNITED STATES PATENT AND TRADEMARK OFFICE

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GOODWIN PROCTER LLP
PATENT ADMINISTRATOR
53 STATE STREET
EXCHANGE PLACE
BOSTON, MA 02109-2881

MAILED

DEC 21 2010

OFFICE OF PETITIONS

In re Patent of Ziegler et al.	:	DECISION ON REQUEST
Patent No. 7,720,572	:	FOR RECONSIDERATION OF
Issue Date: May 18, 2010	:	PATENT TERM ADJUSTMENT
Application No. 11/541,386	:	AND NOTICE OF INTENT TO
Filing Date: September 29, 2006	:	ISSUE CERTIFICATE OF
Attorney Docket No. 09945-0119001	:	CORRECTION

This is a decision on the petition filed July 19, 2010, which is being treated as a petition under 37 C.F.R. § 1.705(d) requesting the patent term adjustment indicated on the patent be corrected to indicate the term of the patent is extended or adjusted by two hundred twenty-one (221) days.

The petition to correct the patent term adjustment indicated on the patent to indicate the term of the patent is extended or adjusted by two hundred twenty-one (221) days is **GRANTED**.

The patent issued on May 18, 2010, with a patent term adjustment determination of 225 days.

Patentees' assert the patent term adjustment determination on the patent is incorrect because:

1. The Office improperly entered a 91-day reduction in patent term adjustment under 37 C.F.R. § 1.704(c)(10), and
2. The Office failed to enter a 95-day reduction in patent term adjustment under 37 C.F.R. § 1.704(b) for Patentees' delay in responding to the Notice to File Missing Parts mailed October 25, 2006.

The Office entered a 91-day reduction in patent term adjustment under 37 C.F.R. § 1.704(c)(10) as a result of a PALM entry indicating Patentees' filed drawings on February 17, 2010. Patentees assert the 91-day reduction in patent term adjustment is improper because Patentees did not file any drawings on February 17, 2010. A review of the record confirms Patentees did not file any drawings on February 17, 2010. Therefore, the Office should not have entered a 91-day reduction in patent term adjustment under 37 C.F.R. § 1.704(c)(10).

The Office issued a Notice to File Missing Parts of Nonprovisional Application on October 25, 2006. Patentees filed a response to the notice on April 30, 2007. Patentees assert the Office

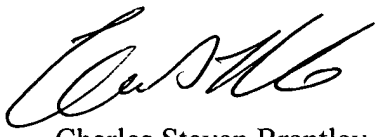
should have entered a 95-day reduction under 37 C.F.R. § 1.704(b). A review of the record confirms a reply to the October 25, 2006, was not filed until April 30, 2007, which was three months and 95 days after the Office issued the notice. Therefore, the Office agrees a 95-day reduction in patent term adjustment is warranted under 37 C.F.R. § 1.704(b).

Patentees have demonstrated the Office improperly entered a 91-day reduction in patent term adjustment and improperly failed to enter a 95-day reduction in patent term adjustment. Therefore, the correct patent term adjustment is 221 days, not 225 days.

The Office acknowledges submission of the $200.00 fee set forth in 37 C.F.R. § 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the patent is extended or adjusted by **two hundred twenty-one (221)** days.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Steven Brantley at (571) 272-3203.



Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO.	:	7,720,572 B2 B2
APPLICATION NO.	:	11/541,386
DATED	:	May 18, 2010
INVENTOR(S)	:	Andrew Zielger et al.

DRAFT

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the Title page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 225 days.

Delete the phrase "by 225 days" and insert -- by 221 days--

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SLATER & MATSIL, L.L.P.
17950 PRESTON ROAD
SUITE 1000
DALLAS, TX 75252

MAILED

MAR 25 2011

OFFICE OF PETITIONS

In re Application of :
Hommen et al. :
Application No. 11/541,400 : DECISION ON PETITION
Filed: September 29, 2006 TO WITHDRAW FROM RECORD
Attorney Docket No. 5968-16 :
:

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed February 14, 2011.

The request is **NOT APPROVED** because it is moot.

A review of the file record indicates that on March 24, 2011 the power of attorney to Slater & Matsil, L.L.P. was revoked by the assignee of the patent application. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

All future communications from the Office will be directed to the below-listed address until otherwise notified by applicant.

Telephone inquires concerning this decision should be directed to the undersigned at 571-272- 7751. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

Joan Olszewski
Petitions Examiner
Office of Petitions

cc: COHEN, PONTANI, LIEBERMAN & PAVANE LLP
551 FIFTH AVENUE
SUITE 1210
NEW YORK NY 10176

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PERKINS COIE LLP
P.O. BOX 1208
SEATTLE, WA 98111-1208

MAILED
DEC 13 2010
OFFICE OF PETITIONS

In re Application of :
Craig A. Kaplan :
Application No. 11/541,436 : ON PETITION
Filed: September 29, 2006 :
Attorney Docket No. 61117-80003. US01 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 14, 2010, to revive the above-identified application.

The application became abandoned for failure to timely reply within the meaning of 37 CFR 1.113 to the final Office action, mailed April 5, 2010, which set a shortened statutory period for reply of three (3) months. A three (3) month extensions of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned on October 6, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a continuing application under 37 CFR 1.53(b); (2) the petition fee of $810; and (3) a proper statement of unintentional delay.

In view of the above, the petition is **GRANTED**.

This application is being revived solely for purposes of continuity. As continuity has been established by this decision, the application is again abandoned in favor of continuing application No. 12/898,619.

Telephone inquiries concerning this decision should be directed to undersigned at (571) 272-1642.

April M. Wise
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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601 W RIVERSIDE
SUITE 1400
SPOKANE, WA 99201

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MAR 14 2011

OFFICE OF PETITIONS

In re Application of :
JUNG, et al :
Application No. 11/541,448 : DECISION ON PETITION
Filed: September 29, 2006 : TO WITHDRAW
Attorney Docket No. QQ1-0046US : FROM RECORD
:

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed January 25, 2011.

The request is **NOT APPROVED.**

The request to withdraw from record cannot be approved because the request to change the correspondence address is not accompanied by a power of attorney nor is the correspondence address that of an assignee of the entire interest who has been properly made of record under 37 CFR 3.71 or the first named inventor.

All future communications from the Office will continue to be directed to the above-identified address until otherwise properly notified.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

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601 W RIVERSIDE
SUITE 1400
SPOKANE, WA 99201

MAILED

MAR 17 2011

OFFICE OF PETITIONS

In re Application of	:	
JUNG, et al	:	
Application No. 11/541,452	:	DECISION ON PETITION
Filed: September 29, 2006	:	TO WITHDRAW
Attorney Docket No. QQ1-0074US	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed January 26, 2011.

The request is **NOT APPROVED.**

The request to withdraw from record cannot be approved because the request to change the correspondence address is not accompanied by a power of attorney nor is the correspondence address that of an assignee of the entire interest who has been properly made of record under 37 CFR 3.71 or the first named inventor.

All future communications from the Office will continue to be directed to the above-identified address until otherwise properly notified.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

cc: MARGARET ANDERSON
106 E. 6TH STREET, SUITE 900
AUSTIN TX 78701

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450

Joseph A. Fuchs
Rockey, Depke & Lyons, LLC
233 S. Wacker Drive
Suite 5450, Sears Tower
Chicago IL 60606-6306

MAILED

JUN 22 2011

OFFICE OF PETITIONS

In re Application of :
Erin KLEIN et al. : ON PETITION
Application No. 11/541,490 :
Filed: September 26, 2006 :
Atty. Docket No.: 112461.00043 :

This is a decision on the petition under 37 CFR 1.137(b), filed May 5, 2011, to revive the above-identified application.

The petition is **GRANTED.**

The application went abandoned for failure to reply in a timely manner to the non-final Office action mailed August 17, 2010, which set a shortened statutory period for reply of three (3) months. No reply was received. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. The application became abandoned November 18, 2010. A Notice of Abandonment was mailed March 22, 2011.

The petition satisfies the conditions for revival pursuant to 37 CFR 1.137(b) by including (1) a reply in the form of a Response to the non-final Office action mailed August 17, 2010, (2) a petition fee of $810 (small entity), and (3) a statement of unintentional delay. The reply to the non-final Office action is accepted as having been unintentionally delayed.

37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. If the statement contained in the instant petition varies from the language required by 37 CFR 1.137(b)(3), the statement contained in the instant petition is being construed as the statement required by 37 CFR 1.137(b)(3) and petitioner must notify the Office if this is **not** a correct interpretation of the statement contained in the instant petition.

Telephone inquires regarding this decision should be directed to Robert DeWitty, Petitions Attorney, Office of Petitions (571-272-8427).

The application file will be referred to Technology Center Art Unit 3772 for further action on the filed Response.

Anthony Knight
Director
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Margaret Anderson
106 E. 6th Street, Suite 900
Austin, TX 78701

MAILED

APR 11 2011

OFFICE OF PETITIONS

In re Application of
Edward K.Y. Jung, et. al.
Application No. 11/541,492
Filed: September 29, 2006
Attorney Docket No. QQ1-0039US

DECISION ON PETITION
TO WITHDRAW FROM
RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 CFR §§ 1.36(b) or 10.40 filed January 27, 2011.

The request is **MOOT**.

A review of the file record indicates that any previous power of attorney was revoked on January 31, 2011. Accordingly, the request to withdraw under 37 CFR §§ 1.36(b) or 10.40 is unnecessary.

All future communications from the Office will be directed to the above-listed address of record until otherwise notified by applicant.

This application file is being referred to Technology Center 3700 for examination in due course.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

cc: Lee & Hayes, PLLC
601 W Riverside
Suite 1400
Spokane, WA 99201

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WOODCOCK WASHBURN LLP
CIRA CENTRE, 12TH FLOOR
2929 ARCH STREET
PHILADELPHIA PA 19104-2891

MAILED
AUG 24 2011
OFFICE OF PETITIONS

In re Application of :
Hsieh et al. :
Application No. 11/541,517 : ON PETITION
Filed: September 28, 2006 :
Attorney Docket No. XXEC-0044 :
For: APPARATUS AND METHOD FOR PROVIDING PANORAMIC IMAGES

This is a decision on the petition under 37 CFR §1.183 requesting waiver of 37 CFR § 1.175(b) which requires that a supplemental reissue declaration be executed by all named inventors.

The petition under 37 CFR §1.183 requesting waiver of 37 CFR § 1.175(b) is **granted**.

Petitioner, TransPacific IP, Ltd., has established that Cheng-Chin Chiang refused to sign the supplemental reissue declaration. Per the September 25, 2008 petition granting Rule 47 status to the application, Jun-Wei Hsieh and Der-Lor Way constructively refused to join in the filing of the application. In view of the refusals by the three joint inventors to sign the declaration, it is agreed that justice would be served by waiving the requirement for their signature on the supplemental reissue declaration filed August 15, 2011. It is noted that Guy L. Proulx, Managing Director of TransPacific IP, Ltd., signed the supplemental declaration on behalf of the assignee.

The aforementioned supplemental reissue declaration has been accepted, on petition, and placed in the file.

This application is being referred to Technology Center AU 2624 for processing of the August 15, 2011 RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/541,670	10/03/2006	Frank H. Speckhart	115716-00128	3274

27557 7590 11/24/2010

BLANK ROME LLP
WATERGATE
600 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, DC 20037

EXAMINER	
DAVIS, OCTAVIA L	
ART UNIT	**PAPER NUMBER**
2855	

MAIL DATE	DELIVERY MODE
11/24/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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BLANK ROME LLP
WATERGATE
600 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, DC 20037

In re Application of:
Frank H. Speckhart et al.
Serial No.: 11/541,670
Filed: October 3, 2006
For: SENSOR PAD FOR CONTROLLING AIRBAG DEPLOYMENT AND ASSOCIATED SUPPORT

DECISION ON PETITION
UNDER 37 C.F.R. § 1.59

This is a response to the petition under 37 CFR 1.59(b), filed November 1, 2010, to expunge information from the above identified application.

The decision on the petition will be held in abeyance until allowance of the application or mailing of an *Ex parte* Quayle action or a Notice of Abandonment, at which time the petition will be decided.

Petitioner requests that an Information Disclosure Statement filed concurrently with the petition includes documents that were filed under seal in an action in the U.S. District Court of the Eastern District of Michigan, and are subject to protective order. document entitled "Proposed Research Plan," by Adam Wax, filed October 19, 2009, be expunged from the record. Petitioner requests that the documents be expunged from the record to maintain their confidential status. The petition fee set forth in 37 CFR 1.17(g) has been paid. The petition, however, does not include a clear statement that the documents have not been made public and does not include a commitment on the part of the petitioner to retain the documents for the period of any patent with regard to which the documents are submitted. It is strongly suggested that the petition be supplemented to meet the conditions for a grantable petition pursuant to M.P.E.P. §724.05.I.

The decision on the petition is held in abeyance because prosecution on the merits is not closed. Accordingly, it is not appropriate to make a final determination of whether or not the material requested to be expunged is "material," with "materiality" being defined as any information which the examiner considers as being important to a determination of patentability of the claims. Thus, the decision on the petition to expunge must be held in abeyance at this time.

During prosecution on the merits, the examiner will determine whether or not the identified documents are considered to be "material." If the information is not considered by the examiner to be material, the information will be removed from the official file.

Any inquiry regarding this decision should be directed to Hien H. Phan, Quality Assurance Specialist, at (571) 272-1606.

for

John W. Cabeca, TC Director
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/541,670	10/03/2006	Frank H. Speckhart	115716-00128	3274

27557 7590 01/06/2012

BLANK ROME LLP
WATERGATE
600 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, DC 20037

EXAMINER	
DAVIS, OCTAVIA L	

ART UNIT	PAPER NUMBER
2855	

MAIL DATE	DELIVERY MODE
01/06/2012	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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BLANK ROME LLP
WATERGATE
600 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, DC 20037

JAN 6 2012

In re Application of:
Frank H. Speckhart et al.
Serial No.: 11/541,670
Filed: October 3, 2006
For: SENSOR PAD FOR CONTROLLING AIRBAG DEPLOYMENT AND ASSOCIATED SUPPORT

DECISION ON PETITION
UNDER 37 C.F.R. § 1.59

This is a decision on the petition under 37 C.F.R. §1.59(b), filed on November 1, 2010 and supplemented on December 21, 2010, to expunge information filed November 1, 2010 from the above-identified application. The application has been allowed and a Notice of Allowance and Fee(s) Due was mailed on December 29, 2011.

The petition is GRANTED.

Petitioner asserts that that the Proprietary Information Disclosure Statement filed on November 1, 2010, contains two documents that were filed under seal in action in the District Court of the Eastern District of Michigan and were subject to protective order. They are: 1) Plaintiff Methode Electronics Inc.'s Opening Claim Construction Brief and Exhibits A thru M; June 1, 2010; Methode Electronics Inc. v. DPH-DAS LLC f/k/a Delphi Automotive Systems LLC, et al.; 09-ev-13078 (D. Mich); and 2) Plaintiff Methode Electronics, Inc.'s Opposition Claim Construction Brief and Exhibits A, B and C; June 21, 2010; Methode Electronics Inc. v. DPH-DAS LLC f/k/a Delphi Automotive System LLC, et al.; 09-cv-14303 (D. Mich).

The information in question has been determined by the examiner and by the undersigned to not be material to the examination of the instant application and may be expunged. The expunged material has been removed from the official file record.

Applicant is required to retain the expunged material(s) for the life of any patent which issues on the above-identified application.

Any inquiry regarding this decision should be directed to Hien H. Phan, Quality Assurance Specialist, at (571) 272-1606.

Diego F.F. Gutierrez
for

Mark Powell, TC Director
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.
1940 DUKE STREET
ALEXANDRIA VA 22314

MAILED

OCT 21 2010

OFFICE OF PETITIONS

In re Application of :
Cheol An Kim et al. :
Application No. 11/541,742 : NOTICE
Filed: October 3, 2006 :
Attorney Docket No. **297168US8** :

This is a notice regarding your request filed September 24, 2008, for acceptance of a fee deficiency submission under 37 CFR 1.28.

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-4584.

JoAnne Burke
Petitions Examiner
Office of Petitions

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POSZ LAW GROUP, PLC
12040 SOUTH LAKES DRIVE
SUITE 101
RESTON VA 20191

MAILED

NOV 10 2011

OFFICE OF PETITIONS

In re Patent No. 7,825,896 :
Issue Date: November 2, 2010 :
Application No. 11/541,777 : DECISION ON PETITION
Filed: October 3, 2006 :
Attorney Docket No. 01-1292 :

This is a decision on the petition filed October 11, 2011, under 37 CFR 1.182, requesting issuance of a duplicate Letters Patent for the above-identified patent.

The petition is **GRANTED**.

The Publishing Division is directed to issue a duplicate Letters Patent.

The petition fee of $400 under the provisions of 37 CFR 1.182 has been paid.

Telephone inquiries concerning this decision may be directed to Diane Goodwyn at (571) 272-6735.

Inquiries regarding the issuance of a duplicate Letters Patent may be directed to Ollie Person at (703) 756-1555 in the Office of Data Management.

A copy of this decision is being sent to the Office of Data Management for issuance of a duplicate Letters Patent.

Thurman K. Page
Petitions Examiner
Office of Petitions

cc: Ollie Person, Randolph Square, 9th Floor, Room D30-A (Fax No. (571) 270-9764)
Kimberly Terrell, Randolph Square, 9th Floor, Room D33 (Fax No. (571) 270-9958)

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SIDLEY AUSTIN LLP
717 NORTH HARWOOD, SUITE 3400
DALLAS, TX 75201

MAILED

NOV 19 2010

OFFICE OF PETITIONS

In re Application of	:	
Toshihito KIDO, et *al.*	:	
Application No. 11/541,835	:	DECISION GRANTING PETITION
Filed: October 2, 2006	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. **15162/08430**	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed November 18, 2010, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). *See* 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on October 20, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (571) 272-7253.

This application is being referred to Technology Center AU 2622 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/Monica A. Graves/
Petitions Examiner, Office of Petitions

[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.*

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RISSMAN HENDRICKS & OLIVERIO, LLP
100 CAMBRIDGE STREET
SUITE 2101
BOSTON MA 02114

MAILED

DEC 29 2011

OFFICE OF PETITIONS

In re Application of :
Roman Denk et al :
Application No. 11/541,888 : DECISION ON PETITION
Filed: October 2, 2006 :
Attorney Docket No. C038-7006US0 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 28, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an amendment; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the nonfinal Office action mailed July 22, 2010, is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.

This application is being referred to Technology Center AU 3732 for appropriate action by the Examiner in the normal course of business.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

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CLARK HILL PLC
150 NORTH MICHIGAN AVENUE
SUITE 2700
CHICAGO IL 60601

MAILED

JUN 28 2011

OFFICE OF PETITIONS

In re Application of :
Johnson :
Application No. 11/541,913 : ON PETITION
Filed: October 2, 2006 :
Attorney Docket No. 28914/121834/2 :
For: CONTAINER AND POINT OF PURCHASE DISPLAY

This is a decision on the petition under 37 CFR 1.137(b), filed May 25, 2011, to revive the above-identified application.

The petition under 37 CFR 1.137(b) is **GRANTED**.

This application became abandoned for failure to timely reply to the Restriction Requirement, mailed October 31, 2008, which set a one month shortened statutory period for reply. No extensions of time having been obtained pursuant to 37 CFR 1.136(a) and no reply being received in the Office, this application became abandoned on December 1, 2008. A Notice of Abandonment was mailed on May 11, 2009.

Applicant has submitted a proper reply to the Restriction Requirement in the form of an election, an acceptable statement of the unintentional nature of the delay in responding to the Restriction Requirement, and the $810.00 petition fee.

The statement of unintentional delay was not signed by a person who would have been in a position of knowing that the delay in filing a timely response was unintentional. In the event that practitioner has no knowledge that the delay was in fact unintentional, practitioner should make a reasonable inquiry to ascertain that, in fact, the delay was unintentional. If practitioner discovers that the delay was intentional, practitioner must so notify the Office.

All requirements under 37 CFR 1.137(b) being met, the petition is granted.

After the mailing of this decision, the file will be returned to Technology Center AU 3782 for consideration of the election filed on May 25, 2011.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/541,958	10/02/2006	Mark A. Exley	01948/074003	1019

21559 7590 03/07/2011

CLARK & ELBING LLP
101 FEDERAL STREET
BOSTON, MA 02110

EXAMINER	
SKELDING, ZACHARY S	
ART UNIT	PAPER NUMBER
1644	

NOTIFICATION DATE	DELIVERY MODE
03/07/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentadministrator@clarkelbing.com

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MAR 0 7 2011

CLARK & ELBING LLP
101 FEDERAL STREET
BOSTON MA 02110

In re Application of	:	
Exley et al.	:	
Serial No.: 11/541,958	:	Decision on Petition
Filed: October 2, 2006		:
Attorney Docket No.: **01948/074003**	:	

This letter is in response to the petition filed under 37 C.F.R. § 1.181 filed on January 27, 2011 to withdraw the finality of the Office action of December 1, 2010.

BACKGROUND

The examiner mailed to applicants a non-final Office action on June 25, 2010. Claims 1-5, 7, 9, 43-51, 53-56 and 70-72 were pending and claims 1-5, 7, 9 and 70-72 were rejected. Claims 43-51 and 53-56 were withdrawn from consideration. Claims 1-4, 7 and 72 were rejected under 35 U.S.C. 102(b) as being anticipated by Dellabona et al. as evidenced by Exley et al. and Satoh et al. Claims 1-5, 7 and 72 were rejected under 35 U.S.C. 103(a) as being unpatentable over Hafler et al. in view of Kent et al. Claim 71 was rejected under 35 U.S.C. 103(a) as being unpatentable over Hafler et al. in view of Kent et al. as applied to claims 1-5, 7, 9, 70 and 72 above, and further in view of Bendelac et al., Rajewsky et al., Smiley et al. and Sonoda et al. Claims 9 and 70 were rejected under 35 USC 112, first paragraph, as non-enabling.

In response thereto, applicants submitted amendments and remarks on September 24, 2010 addressing the rejections set forth in the Office action of June 25, 2010.

The examiner mailed to applicants a final Office action on December 1, 2010. Claims 1-5, 7, 9, 43-51, 53-56, 70, 71 and 73-75 were pending and claims 1-5, 7, 9, 70, 71 and 73-75 were rejected. Claims 43-51 and 53-56 were withdrawn from consideration. Claims 1-4 and 7 were rejected under 35 U.S.C. 102(b) as being anticipated by Dellabona et al. as evidenced by Exley et al. and Satoh et al. Claims 1-5, 7 and 72, and new claims 73 and 74 were rejected under 35 U.S.C. 103(a) as being unpatentable over Hafler et al. in view of Kent et al. Claim 71 was rejected under 35 U.S.C. 103(a) as being unpatentable over Hafler et al. in view of Kent et al. as applied to claims 1-5, 7, 73 and 74 above, and further in view of Bendelac et al., Rajewsky et al.,

Smiley et al. and Sonoda et al. Claims 9 and 70 were rejected under 35 USC 112, first paragraph, as non-enabling. The following new grounds were made: Claim 9 was objected to. Claims 1-5 and 7 were rejected under 35 USC 112, first paragraph, as non-enabling. The examiner noted that applicants' amendment necessitated the new ground(s) of rejection set forth in the final Office action.

On January 27, 2011, applicants submitted the petition currently under review.

DISCUSSION

The petition and file history have been carefully considered.

Applicants argue that "The amendments to claims 1 and 5 did not necessitate the new ground for rejection set forth in the final action because this rejection could have been brought prior to the September 24, 2010 amendment. As explained above, the claims are rejected as lacking enablement because the claims are broader in scope than the teachings of the specification. The question is therefore whether the Office could have brought this same rejection prior to the claim amendments.

In the September 24, 2010 amendment, claim 1 was amended to require that the antibody "does not substantially bind to other cell types." This language therefore further limits the scope of claim 1, i.e., by excluding antibodies that do substantially bind to other cell types. Because the rejection for lack of enablement is set forth on the ground that claim 1 is too broad in scope, this rejection could have been brought prior to the September 24, 2010 amendment to this claim 1.

Similar reasoning can also be applied to claim 5, which, as amended, requires an antibody that preferentially binds to the CDR3 loop of a TCR alpha chain on an invariant NKT cell. In the September 24, 2010 amendment, this claim was amended to delete reference to one of two alternatives mentioned in the claim (i.e., the language regarding the a-13 junction of the TCR). Claim 3, from which claim 5 depends, was amended to recite the antibody binds the TCR *alpha chain,* thus excluding the TCR beta chain from this claim. Like claim 1, the scope of claim 5 was narrowed in the September 24, 2010 amendment. Because the new enablement rejection is based on the premise that claim 5 is too broad in scope, this amendment could not necessitated rejecting claim 5 on this ground."

Applicants' arguments have been accorded careful consideration but they are not persuasive that the examiner erred in making the Office action of December 1, 2010 final. Before the amendment, the claims given their broadest reasonable interpretation encompassed binding of the antibody to any cell, even though it preferentially binds to NKT cell. However, after the amendment, additional testing is required to see that it does not bind to any other cell. Thus, this "new" limitation requires further consideration, which consideration was not required prior to the amendment. While the amendment narrows the scope of the claim, new consideration is required. As a result, this "new" rejection was, in fact, necessitated by amendment. Similar

reasoning can also be applied to claim 5. Accordingly, the finality of the Office action of December 1, 2010 is deemed proper.

DECISION

The petition is **DENIED.**

Any new or renewed petition must be filed within TWO MONTHS of the mail date of this decision.

Should there be any questions about this decision, please contact Special Program Examiner Marianne Seidel, by letter addressed to Director, Technology Center 1600, at the address listed above, or by telephone at 571-272-1600 or by facsimile sent to the general Office facsimile number, 571-273-8300.

George Elliott
Director, Technology Center 1600

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/541,958	10/02/2006	Mark A. Exley	01948/074003	1019

21559 7590 05/17/2011

CLARK & ELBING LLP
101 FEDERAL STREET
BOSTON, MA 02110

EXAMINER	
SKELDING, ZACHARY S	

ART UNIT	PAPER NUMBER
1644	

NOTIFICATION DATE	DELIVERY MODE
05/17/2011	ELECTRONIC

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Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentadministrator@clarkelbing.com

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MAY 16 2011

CLARK & ELBING LLP
101 FEDERAL STREET
BOSTON MA 02110

In re Application of :
Exley, et al. :
Serial No.: 11/541,958 : Decision on Petition
Filed: October 2, 2006 :
Attorney Docket No.: **01948/074003** :

This letter is in response to the renewed petition filed under 37 C.F.R. § 1.181 filed on April 1, 2011 to withdraw the finality of the Office action of December 1, 2010.

BACKGROUND

The examiner mailed to applicants a non-final Office action on June 25, 2010. Claims 1-5, 7, 9, 43-51, 53-56 and 70-72 were pending and claims 1-5, 7, 9 and 70-72 were rejected. Claims 43-51 and 53-56 were withdrawn from consideration. Claims 1-4, 7 and 72 were rejected under 35 U.S.C. 102(b) as being anticipated by Dellabona et al. as evidenced by Exley et al. and Satoh et al. Claims 1-5, 7 and 72 were rejected under 35 U.S.C. 103(a) as being unpatentable over Hafler et al. in view of Kent et al. Claim 71 was rejected under 35 U.S.C. 103(a) as being unpatentable over Hafler et al. in view of Kent et al. as applied to claims 1-5, 7, 9, 70 and 72 above, and further in view of Bendelac et al., Rajewsky et al., Smiley et al. and Sonoda et al. Claims 9 and 70 were rejected under 35 USC 112, first paragraph, as non-enabling.

In response thereto, applicants submitted amendments and remarks on September 24, 2010 addressing the rejections set forth in the Office action of June 25, 2010.

The examiner mailed to applicants a final Office action on December 1, 2010. Claims 1-5, 7, 9, 43-51, 53-56, 70, 71 and 73-75 were pending and claims 1-5, 7, 9, 70, 71 and 73-75 were rejected. Claims 43-51 and 53-56 were withdrawn from consideration. Claims 1-4 and 7 were rejected under 35 U.S.C. 102(b) as being anticipated by Dellabona et al. as evidenced by Exley et al. and Satoh et al. Claims 1-5, 7 and 72, and new claims 73 and 74 were rejected under 35 U.S.C. 103(a) as being unpatentable over Hafler et al. in view of Kent et al. Claim 71 was rejected under 35 U.S.C. 103(a) as being unpatentable over Hafler et al. in view of Kent et al. as applied to claims 1-5, 7, 73 and 74 above, and further in view of Bendelac et al., Rajewsky et al.,

Smiley et al. and Sonoda et al. Claims 9 and 70 were rejected under 35 USC 112, first paragraph, as non-enabling. The following new grounds were made: Claim 9 was objected to. Claims 1-5 and 7 were rejected under 35 USC 112, first paragraph, as non-enabling. The examiner noted that applicants' amendment necessitated the new ground(s) of rejection set forth in the final Office action.

On January 27, 2011, applicants submitted a petition to withdraw finality of the Office action of December 1, 2010.

On March 7, 2011, a petition denying applicants request to withdraw finality was mailed to applicants.

On April 1, 2011, applicants submitted a renewed petition to withdraw finality.

DISCUSSION

The renewed petition and file history have been carefully considered.

Applicants argue that "In determining if a claim amendment "necessitates a new ground of rejection," the critical issue is whether that ground for rejection could have been made prior to the amendment being entered. To make this determination, both the claim, prior to the amendment in question, and the reasoning behind the new rejection must be carefully examined. It is then necessary to ask whether the reasoning behind this new rejection can be applied to the unamended claim. If a rejection based on this same reasoning could have been applied to the unamended claim, it is clear that the amendment did not necessitate the new ground for rejection. Here, the Office has made no showing that the September 24th amendment necessitated the enablement rejection in the December 1st action." Applicants further point out "... the critical question is whether the same enablement rejection could have been brought against unamended claim 1. Because unamended claim 1 is broader in scope than amended claim 1, it necessarily follows that unamended claim 1 also encompassed the very same antibodies that the Office contends are not enabled by the specification. Thus the alleged "problem" with amended claim 1 had to exist with unamended claim 1. There is no reason an enablement rejection on the same basis could not have been brought against unamended claim 1. Under these circumstances, it is clear that this new ground for rejection was not necessitated by Applicants' amendment."

Applicants' points are well-taken and found persuasive that the enablement rejection could have been raised against unamended claim 1. Accordingly, it is *not* proper for an office action to be made final when the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims as in the instant case nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c).

DECISION

Upon reconsideration, the petition is **GRANTED**.

The Office action mailed December 1, 2010 is hereby vacated to the extent that it was made "final" and the Office action is now considered to be a non-final Office action. The after final amendment of March 25, 2011 will also be entered. This application will be forwarded to the examiner to take an action consistent with the decision herein.

Should there be any questions about this decision, please contact Special Program Examiner Marianne Seidel, by letter addressed to Director, Technology Center 1600, at the address listed above, or by telephone at 571-272-1600 or by facsimile sent to the general Office facsimile number, 571-273-8300.

George Elliott
Director, Technology Center 1600

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MAR 01 2012
OFFICE OF PETITIONS

In re Application of	:	
Exley et al.	:	DECISION ON APPLICATION
Application No. 11/541,958	:	FOR
Filed: October 2, 2006	:	PATENT TERM ADJUSTMENT
Atty Docket No. 01948/074003	:	

This is a decision on the "REEQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT," filed February 1, 2012. Pursuant to applicant's duty of good faith and candor to the Office, applicants request review of the initial determination of patent term adjustment.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PALM screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is three hundred thirty-three **(333)** days. A copy of the updated PALM screen, showing the correct determination, is enclosed.

On November 1, 2011, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 392 days. The instant application for patent term adjustment was timely filed on February 1, 2012[1]. Applicants state no grounds for their request for reconsideration of patent term adjustment.

[1] PALM records indicate that the Issue Fee was received on February 1, 2012.

Nonetheless, a review of the application history reveals that correction of the initial patent term adjustment is warranted. 37 CFR 1.704(c)(7) provides that:

> Submission of a reply having an omission (§1.135(c)), in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the reply having an omission was filed and ending on the date that the reply or other paper correcting the omission was filed.

A reply with an omission was filed on December 15, 2009 (See Notice mailed March 5, 2010). A reply correcting that omission was filed on April 5, 2010. Accordingly, a period of reduction of 111 days for filing a response on April 5, 2010 to correct an omission in the response filed on December 15, 2009 is warranted and is being entered.

A review of the record supports a conclusion that no supplemental response was filed on March 25, 2011. The proper response to the non-final Office action (given the withdrawal of the finality of the Office action) was filed on February 1, 2011. The patent term adjustment should have been calculated using that date. Accordingly, the period of reduction of 52 days associated with the filing of a supplemental paper, pursuant to 37 CFR 1.705(c)(8), is not warranted and is being removed.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the notice of allowance is THREE HUNDRED THIRTY-THREE **(333)** days.

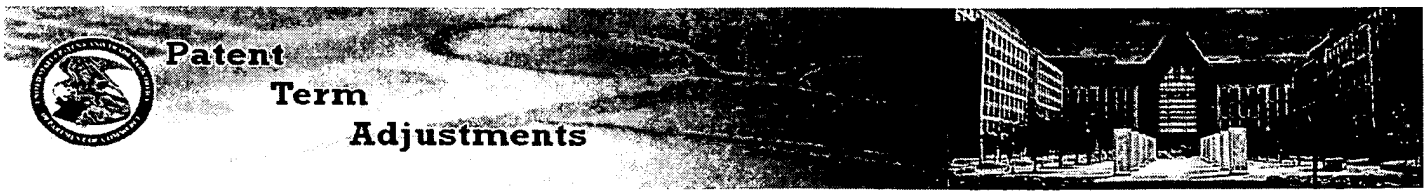
The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The Office of Data Management has been advised of this decision. The application is thereby forwarded to the Office of Data Management for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and if applicable, for the Office taking in excess of three years to issue the patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PAIR Screen



PTA/PTE Information | Patent Term Adjustment | Patent Term Extension

Application Number*: 11541958 Search | Explanation of PTA Calculation | Explanation of PTE Calculation

PTA Calculations for Application: 11541958

Application Filing Date	10/02/2006	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays:	540
A Delays	540	PTO Manual Adjustment	-59
B Delays	0	Applicant Delay (APPL)	148
C Delays	0	Total PTA (days)	333

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
146	02/27/2012		P028	Adjustment of PTA Calculation by PTO	52		0
145	02/27/2012		P028	Adjustment of PTA Calculation by PTO		111	0
126	11/01/2011		MN/=.	Mail Notice of Allowance			0
125	10/27/2011		OAR	Office Action Review			0
124	10/27/2011		OAR	Office Action Review			0
123	10/27/2011		OAR	Office Action Review			0
122	10/27/2011		IREV	Issue Revision Completed			0
121	10/27/2011		DVER	Document Verification			0
120	10/27/2011		N/=.	Notice of Allowance Data Verification Completed			0
119	10/27/2011		DOCK	Case Docketed to Examiner in GAU			0
117	10/25/2011		EX.A	Examiner's Amendment Communication			0
116	10/25/2011		CNTA	Allowability Notice			0
118	10/24/2011		EXIE	Interview Summary - Examiner Initiated			0
114	10/21/2011		FWDX	Date Forwarded to Examiner			0
115	10/20/2011		AF/D	Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received			0
113	10/20/2011		A.NE	Amendment after Final Rejection			0
112	07/20/2011		ELC_RVW	Electronic Review			0
111	07/20/2011		EML_NTF	Email Notification			0
110	07/20/2011	06/01/2011	MCTFR	Mail Final Rejection (PTOL - 326)	49		81
109	07/17/2011		OAR	Office Action Review			0
108	07/17/2011		CTFR	Final Rejection			0
107	06/10/2011		IDSC	Information Disclosure Statement considered			0
105	06/10/2011		M844	Information Disclosure Statement (IDS) Filed			0
104	06/10/2011		WIDS	Information Disclosure Statement (IDS) Filed			0
103	05/21/2011		EML_NTR	Email Notification			0
102	05/20/2011		FWDX	Date Forwarded to Examiner			0
99	05/20/2011		FWDX	Date Forwarded to Examiner			0
100	05/17/2011		MW/AC	Mail Notice of Withdrawn Action			0
97	05/17/2011		MPTGR	Mail-Petition Decision - Granted			0
98	05/16/2011		W/AC	Withdrawing/Vacating Office Action Letter			0
96	05/16/2011		PTGR	Petition Decision - Granted			0
95	04/01/2011		PET.	Petition Entered			0
101	03/25/2011	02/01/2011	SA..	Supplemental Response		52	81
94	03/25/2011		EML_NTR	Email Notification			0
93	03/25/2011		MCTAV	Mail Advisory Action (PTOL - 303)			0
92	03/16/2011		OAR	Office Action Review			0
91	03/14/2011		CTAV	Advisory Action (PTOL-303)			0
90	03/14/2011		APRS	Application Made Available for Examination			0
89	03/11/2011		EML_NTR	Email Notification			0
88	03/07/2011		MPTDE	Mail-Petition Decision - Denied			0
87	03/04/2011		PTDE	Petition Decision - Denied			0
85	03/01/2011		UPRS	Application Made Unavailable for Examination			0
82	02/03/2011		FWDX	Date Forwarded to Examiner			0
83	02/01/2011		AF/D	Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received			0
81	02/01/2011		A.NE	Amendment after Final Rejection			0
86	01/27/2011		PET.	Petition Entered			0
80	01/26/2011		EML_NTR	Email Notification			0
79	01/26/2011		MEXIN	Mail Examiner Interview Summary (PTOL - 413)			0
78	01/20/2011		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
75	12/01/2010		ELC_RVW	Electronic Review			0
74	12/01/2010		EML_NTF	Email Notification			0
73	12/01/2010		MCTFR	Mail Final Rejection (PTOL - 326)			0
72	11/26/2010		CTFR	Final Rejection			0
67	09/27/2010		FWDX	Date Forwarded to Examiner			0
66	09/24/2010		A...	Response after Non-Final Action			0
65	06/25/2010		ELC_RVW	Electronic Review			0
64	06/25/2010		EML_NTF	Email Notification			0
63	06/25/2010		MCTNF	Mail Non-Final Rejection			0
62	06/21/2010		CTNF	Non-Final Rejection			0
53	04/19/2010		FWDX	Date Forwarded to Examiner			0
52	04/05/2010		A...	Response after Non-Final Action			0
51	03/05/2010		ELC_RVW	Electronic Review			0
50	03/05/2010		EML_NTF	Email Notification			0
49	03/05/2010		MCTMS	Mail Miscellaneous Communication to Applicant			0
48	03/01/2010		CTMS	Miscellaneous Action with SSP			0
46	12/16/2009		FWDX	Date Forwarded to Examiner			0

47	12/15/2009		A.PE	Preliminary Amendment			0
45	12/15/2009		ELC.	Response to Election / Restriction Filed			0
44	12/10/2009		ELC_RVW	Electronic Review			0
43	12/10/2009		EML_NTF	Email Notification			0
42	12/10/2009		EML_NTR	Email Notification			0
41	12/10/2009		MCTRS	Mail Restriction Requirement			0
40	12/10/2009		MEXIN	Mail Examiner Interview Summary (PTOL - 413)			0
39	12/07/2009		CTRS	Restriction/Election Requirement			0
38	12/01/2009		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
33	09/29/2009		FWDX	Date Forwarded to Examiner			0
31	09/29/2009		FWDX	Date Forwarded to Examiner			0
61	09/08/2009		IDSC	Information Disclosure Statement considered			0
35	09/08/2009		RCAP	Reference capture on IDS			0
34	09/08/2009	09/08/2009	M844	Information Disclosure Statement (IDS) Filed			30
32	09/08/2009		SA..	Supplemental Response			0
30	09/08/2009	07/06/2009	ELC.	Response to Election / Restriction Filed		64	25
29	09/08/2009		XT/G	Request for Extension of Time - Granted			0
28	09/08/2009		WIDS	Information Disclosure Statement (IDS) Filed			0
27	04/06/2009		ELC_RVW	Electronic Review			0
26	04/06/2009		EML_NTF	Email Notification			0
25	04/06/2009	12/02/2007	MCTRS	Mail Restriction Requirement	491		0.5
24	03/30/2009		CTRS	Restriction/Election Requirement			0
23	07/12/2007		PG-ISSUE	PG-Pub Issue Notification			0
22	05/07/2007		DOCK	Case Docketed to Examiner in GAU			0
21	04/26/2007		TSSCOMP	IFW TSS Processing by Tech Center Complete			0
19	04/17/2007		OIPE	Application Dispatched from OIPE			0
18	03/30/2007		PGPC	Sent to Classification Contractor			0
17	03/30/2007		COMP	Application Is Now Complete			0
10	03/15/2007		CRFE	CRF Is Good Technically / Entered into Database			0
20	03/06/2007		A.PE	Preliminary Amendment			0
16	03/06/2007	02/02/2007	FLFEE	Payment of additional filing fee/Preexam		32	9
14	03/06/2007		SEQLIST	A set of symbols and procedures, provided to the PTO on a set of computer listings, that describe in			0
13	03/06/2007		SES	Small Entity Statement (37 CFR 1.27)			0
12	03/06/2007		OATHDECL	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic			0
11	03/06/2007		CORRDRW	Applicant has submitted new drawings to correct Corrected Papers problems			0
9	11/02/2006		INCD	Notice Mailed--Application Incomplete--Filing Date Assigned			0
5	10/19/2006		L128	Cleared by L&R (LARS)			0
4	10/11/2006		L198	Referred to Level 2 (LARS) by OIPE CSR			0
3	10/11/2006		CLSS	CASE CLASSIFIED BY OIPE			0
2	10/06/2006		SCAN	IFW Scan & PACR Auto Security Review			0
15	10/02/2006		CLAIM	Claim Preliminary Amendment			0
1	10/02/2006		IEXX	Initial Exam Team nn			0
0.5	10/02/2006		EFILE	Filing date			0

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MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY & POPEO, PC
ONE FINANCIAL CENTER
BOSTON, MA 02111

MAILED

OCT 03 2011

OFFICE OF PETITIONS

In re Application of

Jerry M. Held
Application No. 11/542,010
Filed: October 2, 2006
Attorney Docket No. 79050-081

DECISION ON PETITION
TO MAKE SPECIAL UNDER
37 CFR 1.102(c)(1)

This is a decision on the petition under 37 CFR 1.102(c)(1), filed September 28, 2011, to make the above-identified application special based on applicant's health as set forth in M.P.E.P. § 708.02, Section III.

The petition is **DISMISSED**.

A grantable petition to make an application special under 37 CFR 1.102(c)(1) and MPEP § 708.02, Section III: Applicant's Health, must be accompanied by evidence, such as a doctor's certificate or other medical certificate, showing that the state of health of the applicant is such that he or she might not be available to assist in the prosecution of the application if it were to run its normal course. No fee is required

The instant petition does not include proper evidence. The evidence should be on Office letter head signed by a medical physician.

Further correspondence with respect to this matter should be addressed as follows:

By Mail:
Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

By hand:
U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By FAX:
(571) 273-8300

Telephone inquiries concerning this decision should be directed to undersigned at 571-272-1642.

All other inquiries concerning either the examination or status of the application should be directed to the Technology Center.

The application is being forwarded to the Technology Center Art Unit 1627 for action in its regular turn.

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

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28 STATE STREET
7TH FLOOR
BOSTON, MA 02109

MAILED

OCT 25 2011

OFFICE OF PETITIONS

In re Application of

Jerry M. Held
Application No. 11/542,010
Filed: October 2, 2006
Attorney Docket No. 519968

DECISION ON PETITION
TO MAKE SPECIAL UNDER
37 CFR 1.102(c)(1)

This is a decision on the renewed petition under 37 CFR 1.102(c)(1), filed October 17, 2011, to make the above-identified application special based on applicant's health as set forth in M.P.E.P. § 708.02, Section III.

The petition is **GRANTED**.

A grantable petition to make an application special under 37 CFR 1.102(c)(1) and MPEP § 708.02, Section III: Applicant's Health, must be accompanied by evidence showing such as a doctor's certificate or other medical certificate that the state of health of the applicant is such that he or she might not be available to assist in the prosecution of the application if it were to run its normal course. No fee is required

The instant petition includes from applicant's physician that applicant's health is such that he might not be available to assist in the prosecution of the application, if it were to run its normal course. Accordingly, the above-identified application has been accorded "special" status.

Telephone inquiries concerning this decision should be directed to undersigned at 571-272-1642. All other inquiries concerning either the examination or status of the application should be directed to the Technology Center.

The application is being forwarded to the Technology Center Art Unit 1627 for action on the merits commensurate with this decision.

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

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CHARLES A. CHRISTIAN
3923 CROUCH DRIVE
NASHVILLE TN 37206

MAILED
SEP 27 2010
OFFICE OF PETITIONS

In re Application of :
Charles Anthony Christian :
Application No. 11/542,029 : ON PETITION
Filing Date: October 3,2006 :
For:PERFORATED PROJECTION :
VISORS :

This is a decision on the petition under 37 CFR 1.137(a), filed on June 30, 2010, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(a)" or "Renewed Petition under 37 CFR 1.137(b)." This is not a final agency decision.

This application became abandoned for failure to timely file a proper reply to the final Office action mailed on December 4, 2009. An Advisory Action was mailed on January 19, 2010, March 29, 2010 and on May 10, 2010.

Petitioner asserts unavoidable and states that "On May 2, 2010, my home sustained major damage as a result of the historical flood here in Nashville, TN. ..... While living in various places, the mail that was coming to my home became displaced among the different family member's homes my family has been staying in."

Petitioner further states that "I did receive the mail your Office mailed on May 10, 2010, but it became misplaced for several weeks due to the various amounts of volunteers coming into my home.

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by:

> (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee;
>
> (2) the petition fee as set forth in § 1.17(l);
>
> (3) a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and
>
> (4) any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (c) of this section.

This petition lacks item (3) above.

As to item (3), Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

> The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities

> as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.[1]

The showing of record is inadequate to establish unavoidable delay within the meaning of 37 CFR 1.137(a). Specifically, an application is "unavoidably" abandoned only where petitioner, or counsel for petitioner, takes all action necessary for a proper response to the outstanding Office action, but through the intervention of unforeseen circumstances, such as failure or mail, telegraph, telefacsimile, or the negligence of otherwise reliable employees, the response is not timely received in the Office.[2]

The Office is not unsympathetic to damaged caused petitioner/home by the flood in Nashville, TN. However, the abandonment of the application occurred as a result of petitioner not filing an acceptable amendment/reply to the final Office action mailed December 4, 2009. In any event, preoccupation with other matters which took precedence over the above-identified application does not constitute unavoidable delay. Petitioner did state that he received the Office action mailed December 4, 2009, but it became misplaced. However, petitioner could have called the Office to inquire of a copy of the final Office action. *See Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982).*

As the showing presented is insufficient to establish unavoidable delay within the meaning of 35 U.S.C. § 133 and 37 CFR 1.137(a), the petition will be dismissed.

ALTERNATIVE VENUE

Petitioner may wish to consider filing a renewed petition under 37 CFR 1.137(b),[3] which now provides that where the delay in

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[1] In re Mattullath, 38 App. D.C. 497, 514-15 (1912)(quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account."

[2] Ex parte Pratt, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887).

[3] Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b).

The filing of a petition under the unintentional standard cannot be intentionally delayed and therefore should be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

A copy of the form for filing a petition under 37 CFR 1.137(b) to revive an application unintentionally abandoned is enclosed herewith for petitioner's convenience.

Further correspondence with respect to this matter should be delivered through one of the following mediums:

By mail: Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

---

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee;

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Director may required additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

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(for help using EFS-Web call the
Patent Electronic Business Center
at (866) 217-9197)

Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

Encl: PTO/SB/64

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600 TRAVIS SUITE 2800
HOUSTON, TX 77002-3095

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SEP 13 2010

OFFICE OF PETITIONS

In re Application of :
Rinat O. ESENALIEV :
Application No. 11/542,057 : DECISION ON PETITION
Filed: October 2, 2006 : UNDER 37 CFR 1.181
Attorney Docket No. **021101-00601** :

This is a decision on the petition, filed January 14, 2010, which is being treated as a petition under 37 CFR 1.8(b), requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely respond to the Office action of May 29, 2009, which set a three (3) month shortened statutory period for reply. Accordingly, a reply was due on or before August 29, 2009.

Petitioner states that a timely reply was mailed via certificate of mailing on November 30, 2009, which included the following papers: a response with three month extension of time, new drawings and one page transmittal form (PTO/SB/21). Petitioner has submitted a copy of the previously mailed correspondence, which bears a certificate of mailing dated November 30, 2009, which would have rendered the reply timely if received.

The file record does not include the originally submitted papers. Failure to receive correspondence which includes a certificate of mailing or certificate of facsimile transmission is addressed in 37 CFR 1.8(b), reproduced below:

> In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the

correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

The petition satisfies the above requirements of 37 CFR 1.8(b). Accordingly, the holding of abandonment for failure to timely file a reply to the Office action of May 29, 2009 is hereby withdrawn and the application restored to pending status.

The copy of the reply received with the petition will be accepted in place of the reply shown to have been mailed (or transmitted by facsimile) on November 30, 2009.

This application is being referred to Technology Center AU 3737 for appropriate action in the normal course of business on the reply received with petition.

Thurman K. Page
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

SEP 20 2010

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James J. Daley
679 Shackamaxon Drive
Westfield, NJ 07090

Paper No. 20100916

In re Application of
Maurus Logan
Application No. 11/542,077
Filed: October 2, 2006
For: METHOD AND APPARATUS
FOR SECURING CABLES AND THE LIKE

DECISION ON PETITION TO WITHDRAW THE FINAL REJECTION UNDER 37 CFR 1.181

This is a decision on Applicant's Petition under 37 CFR 1.181 filed on July 16, 2010 to review the Examiner's holding Final Rejection mailed on March 30, 2010.

The record reflects that on February 26, 2010, Applicant submitted an Appeal Brief appealing the Final rejection of claims 1, 3, 8, 11, 20 and 21. On March 30, 2010, Examiner sent out a subsequent Final rejection withdrawing the rejections of claims 1, 3, 8, 11 and 20, while maintaining the rejection of claim 20. Applicant sent in a response on June 28, 2010 that was treated as an After-final response, upon which Examiner sent out an Advisory Action on July 2, 2010 maintaining the rejection of claim 20.

The MPEP states that after an appeal brief under 37 CFR 41.37 has been filed and the examiner has considered the issues on appeal, the examiner may:

> A) reopen prosecution to enter a new ground of rejection with approval from the supervisory patent examiner (see MPEP §1207.04);
>
> B) withdraw the final rejection and allow the application if the examiner determines that the rejections have been overcome and no new ground of rejection is appropriate; or
>
> C) maintain the appeal by conducting an appeal conference (MPEP §1207.01) and draft an examiner's answer (MPEP § 1207.02). Any examiner's answer mailed on or after September 13, 2004 may included a new ground of rejection (MPEP §1207.03).

A review of the record reveals that after Applicant's filling of the Appeal Brief on February 26, 2010, Examiner failed to meet the requirements set forth under 37 CFR 41.37. The Final rejection mailed on March 30, 2010 did not set forth a new grounds

of rejection, but merely maintained the rejection of claim 20. The withdrawal of rejections of some of the claims on appeal should have been handled in the Examiner's Answer. Additionally, Examiner failed to get approval from the Supervisory Patent Examiner before mailing out the Final rejection on March 30, 2010. Therefore, the Final rejection mailed on March 30, 2010 and the Advisory Action mailed on July 2, 2010 were both improper and are hereby **VACATED**. The application is being returned to the Examiner to address the Appeal Brief filed on February 26, 2010 under the requirements set forth by 37 CFR 41.37.

SUMMARY: The Petition is **GRANTED.**

Any questions regarding this decision should be directed to J. Allen Shriver at (571) 272-6698.

Katherine Matecki

Kathy Matecki, Director
Technology Center 3600
(571) 272-5250

SM/jas : 9/16/2010

SM

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/542,280	10/02/2006	Kevin Wilson	1166/76285	5846

79697 7590 02/21/2012

COOPER & DUNHAM LLP
30 Rockefeller Plaza
20th Floor
New York, NY 10112

EXAMINER
KIM, CHONG R

ART UNIT	PAPER NUMBER
2624	

MAIL DATE	DELIVERY MODE
02/21/2012	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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FEB 21 2012

Cooper & Dunham LLP
30 Rockefeller Plaza
20th Floor
New York, NY 10112

In re Application of : DECISION ON THE PETITION
Kevin Wilson et al. : REQUESTING CONSIDERATION
Application No. 11/542,280 : OF A REFERENCE LISTED ON A
Filed: December 23, 2010 : PREVIOUSLY SUBMITTED IDS
For: CARDIOVASCULAR RISK ASSESSMENTS USING AORTIC CALCIFICATION INFORMATION DERIVED FROM X-RAY MEASUREMENTS TAKEN WITH A DUAL ENERGY X-RAY DENSITOMETER

This is a decision on applicant's petition under 37 CFR 1.181, filed December 13, 2011, that requests the Supervisor to compel the examiner of record in this case to consider the document labeled (AW) submitted in the Information Disclosure Statement (IDS) received September 21, 2010.

The petition is **DISMISSED as MOOT**.

A review of the file record reveals that document (AW) was not specifically and clearly indicated as being considered by an examiner initial on the signed IDS mailed October 11, 2011, nor was it clearly indicated as not being considered by lining-through.

A further review of the file reveals that on January 24, 2012, a Supplemental Notice of Allowability was mailed by the examiner that acknowledged consideration of the document (AW) in the IDS submitted on September 21, 2010.

Therefore, given the above-noted Supplemental Notice of Allowability, the petition to have the Supervisor compel the examiner to consider document (AW) on the IDS of September 21, 2010 is **DISMISSED as MOOT**.

Any questions or comments with respect to the decision should be forwarded to Quality Assurance Specialist, Steven Meyers at (571) 272-6611.

Dave Talbott, Director
Patent Technology Center 3600
(571) 272-5150

Snm/snm: 1/25/12

SM

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HENRY I. SCHANZER, ESQ
29 BROOKFALL RD.
EDISON, NJ 08817

MAILED

JUN 20 2011

OFFICE OF PETITIONS

In re Application of
James S. Gerber
Application No. 11/542,499
Filed: October 3, 2006
Attorney Docket No. OPT 54

ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed June 6, 2011, to revive the above-identified application.

The petition is **DISMISSED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed October 12, 2010, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were timely obtained. Accordingly, the application became abandoned on January 13, 2011.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D).

The petition lacks item (3) because it is unsigned and therefore is considered as not containing a proper statement of unintentional delay and cannot be accepted. It appears that the petition was intended to be signed by Henry I. Schanzer, an attorney registered to practice before the U.S. Patent and Trademark Office.

Petitioner's attention is directed to 37 CFR 1.33(b), which states that:

"Amendments and other papers filed in the application must be signed by:

(1) A registered patent attorney or patent agent of record appointed in compliance with § 1.32(b),
(2) A registered attorney or agent not of record who acts in a representative capacity under the provisions of § 1.34,
(3) An assignee as provided for under § 3.71(b) of this chapter, or
(4) All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter".

Further correspondence with respect to this matter should be addressed as follows:

By Mail:
Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

By hand:
U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

The centralized facsimile number is **(571) 273-8300.**

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6059.

A. Kelley-Collier

Alicia Kelley-Collier
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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HENRY I. SCHANZER, ESQ
29 BROOKFALL RD.
EDISON, NJ 08817

MAILED
JUL 27 2011
OFFICE OF PETITIONS

In re Application of
James S. Gerber
Application No. 11/542,499
Filed: October 3, 2006
Attorney Docket No. OPT 54

ON PETITION

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed July 1, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed October 12, 2010, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were timely obtained. Accordingly, the application became abandoned on January 13, 2011. A Notice of Abandonment was mailed on May 13, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $810 , and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6059.

This application is being referred to Technology Center AU 3617 for appropriate action by the Examiner in the normal course of business on the reply received June 6, 2011.

A. Kelley-Collier

Alicia Kelley-Collier
Petitions Examiner
Office of Petitions

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EDWARDS WILDMAN PALMER LLP
P.O. BOX 55874
BOSTON, MA 02205

MAILED

NOV 16 2011

OFFICE OF PETITIONS

In re Application of :
Deyan Wang et al :
Application No. 11/542,563 : ON PETITION
Filed: October 3, 2006 :
Attorney Docket No. 52847 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 25, 2011, to revive the above-identified application.

The petition is **GRANTED.**

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $930 and the submission required by 37 CFR 1.114; (2) the petition fee of $1860; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3210.

This application is being referred to Technology Center AU 1722 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

Irvin Dingle
Petition Examiner
Office of Petitions

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FISH & RICHARDSON P.C. (BO)
P.O. BOX 1022
MINNEAPOLIS, MN 55440-1022

MAILED

APR 01 2011

OFFICE OF PETITIONS

In re Patent No. 7,649,170
Issue Date: October 3, 2006
Application No. 11/542,568
Filed: January 19, 2010
Attorney Docket No. 08919-159001

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.182, filed October 4, 2010, requesting issuance of a duplicate Letters Patent for the above-identified patent.

The petition is **GRANTED**.

The Office of Data Management is directed to issue duplicate Letters Patent.

As authorized, the $400 fee for the petition under 37 CFR 1.182 has been assessed to petitioner's deposit account.

Telephone inquiries concerning this decision may be directed to April M. Wise at (571) 272-1642. Inquiries regarding the issuance of the duplicate Letters Patent may be directed to Niomi P. Farmer in the Office of Data Management at (703) 756-1556.

A copy of this decision is being faxed to Office of Data Management for issuance of duplicate Letters Patent.

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

cc: Niomi P. Farmer, Randolph Square, 9th Floor, Room D30-B (Fax No. (571) 270-9937)

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LESAVICH HIGH-TECH LAW GROUP, P.C.
SUITE 325
39 S. LASALLE STREET
CHICAGO IL 60603

MAILED

JUN 01 2011

OFFICE OF PETITIONS

In re Application of :
ROSENTHAL, et al :
Application No. 11/542,586 : DECISION ON PETITION
Filed: October 3, 2006 : TO WITHDRAW
Attorney Docket No. 05,152-A : FROM RECORD
:

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed May 4, 2011.

The request is **NOT APPROVED.**

The Request to withdraw from record cannot be approved because the change of correspondence address is not that of an assignee who has properly intervened. The Office will either change the correspondence address of record to the most current address information provided for an assignee of the entire interest who properly became of record under 37 CFR 3.71 or, if no assignee of the entire interest has properly been made of record under 37 CFR 3.71, the most current address information provided for the first named inventor.

All future communications from the Office will continue to be directed to the above-identified address until otherwise properly notified.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272- 6735.

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

cc: ROSENTHAL COLLINS GROUP, LLC
216 W. JACKSON, SUITE 400
CHICAGO, IL 60606

Doc code : PET.OP.AGE
Description : Petition to make special based on Age/Health

PTO/SB/130 (07-09)
Approved for use through 07/31/2012. OMB 0651- 0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number

PETITION TO MAKE SPECIAL BASED ON AGE FOR ADVANCEMENT OF EXAMINATION UNDER 37 CFR 1.102(c)(1)

Application Information

Application Number	11/542,588	Confirmation Number	5084	Filing Date	2006-10-03
Attorney Docket Number (optional)	24035-016	Art Unit	3693	Examiner	Gottschalk
First Named Inventor	Steven S. Schuver				
Title of Invention	SYSTEM AND METHOD FOR PROTECTING A SECURITY				

Attention: Office of Petitions
An application may be made special for advancement of examination upon filing of a petition showing that the applicant is 65 years of age, or more. No fee is required with such a petition. See 37 CFR 1.102(c)(1) and MPEP 708.02 (IV).

APPLICANT HEREBY PETITIONS TO MAKE SPECIAL FOR ADVANCEMENT OF EXAMINATION IN THIS APPLICATION UNDER 37 CFR 1.102(c)(1) and MPEP 708.02 (IV) ON THE BASIS OF THE APPLICANT'S AGE.

A grantable petition requires one of the following items:
(1) Statement by one named inventor in the application that he/she is 65 years of age, or more; or
(2) Certification by a registered attorney/agent having evidence such as a birth certificate, passport, driver's license, etc. showing one named inventor in the application is 65 years of age, or more.

Name of Inventor who is 65 years of age, or older

Given Name	Middle Name	Family Name	Suffix
Thomas	L	Bakos	

A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18.
Please see 37 CFR 1.4(d) for the format of the signature.

Select (1) or (2) :

○ (1) I am an inventor in this application and I am 65 years of age, or more.

● (2) I am an attorney or agent registered to practice before the Patent and Trademark Office, and I certify that I am in possession of evidence, and will retain such in the application file record, showing that the inventor listed above is 65 years of age, or more.

Signature	/david h. chervitz/	Date (YYYY-MM-DD)	2001-08-22
Name	David H. Chervitz	Registration Number	32820

PTO/SB/130 (07-09)
Approved for use through 07/31/2012. OMB 0651- 0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Fr eedom of Information Act requires disclosure of these records.

2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.

6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).

7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about indivi duals.

8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.

9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

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In re Application of
Steven S. Schuver

Application No. 11542588

Filed: October 3,2006

Attorney Docket No. 24035-016

:
:
:DECISION ON PETITION TO MAKE SPECIAL
:UNDER 37 CFR 1.102(c)(1)
:

This is a decision on the electronic petition under 37 CFR 1.102 (c)(1), filed 22-AUG-2011 to make the above-identified application special based on applicant's age as set forth in MPEP § 708.02, Section IV.

The petition is **GRANTED**.

A grantable petition to make an application special under 37 CFR 1.102(c)(1), MPEP § 708.02, Section IV: Applicant's Age must include a statement by applicant or a registered practitioner having evidence that applicant is at least 65 years of age. No fee is required.

Accordingly, the above-identified application has been accorded "special" status and will be taken up for action by the examiner upon the completion of all pre-examination processing.

Telephone inquiries concerning this electronic decision should be directed to the Electronic Business Center at 866-217-9197.

All other inquiries concerning either the examination or status of the application should be directed to the Technology Center.

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JUN 02 2011

OFFICE OF PETITIONS

BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO IL 60610

In re Patent of Blacker et al.	:	DECISION ON
Patent No. 7,905,228	:	REQUEST FOR RECONSIDERATION
Issued: March 15, 2011	:	OF
Application No. 11/542,619	:	PATENT TERM ADJUSTMENT
Filed: October 3, 2006	:	and
Atty Docket No. 6298/557	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT PURSUANT TO 37 CFR §1.705(d)," filed May 16, 2011. Patentees request that the patent term adjustment indicated on the patent be corrected from eight hundred twenty-two (822) days to nine hundred ten (910) days.

The request for reconsideration of patent term adjustment is **GRANTED to the extent indicated herein**.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of nine hundred twenty (920) days.

Patentees dispute the period of reduction of 98 days entered for the December 8, 2010 filing of a letter that Patentees submitted pursuant to their duty of good faith and candor regarding a possible error in patent term adjustment.

Patentees are correct. A review of the record confirms that a period of reduction of 98 days was entered for the filing of a candor letter on December 8, 2010. The only other paper filed on January 28, 2011 was the issue fee transmittal, for which a period of reduction was not warranted.

§ 1.704(e) provides that:

> Submission of an application for patent term adjustment under § 1.705(b) (with or without request under §1.705(c) for reinstatement of reduced patent term adjustment) will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraph (c)(10) of this section.

Likewise, filing of a letter pursuant to comment 43 is covered by 37 CFR 1.704(e). Therefore, the Patent Term Adjustment was incorrectly reduced. Consequently 98 days will be properly restored to patentees patent term adjustment.

In view thereof, the patent should have issued with a revised patent term adjustment of nine hundred twenty (920) days - 693 days A delay + 340 days B delay - 23 overlapping days - 90 days Applicant delay.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

As the December 8, 2010 letter was submitted as an advisement to the Office of a possible error in Applicants' favor, the Office did not assess the $200.00 fee under 37 CFR 1.18(e). Likewise, no fee is required filed solely to remove the period of reduction entered due to the filing of the candor letter.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **nine hundred twenty (920)** days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,905,228 B2

DATED : **March 15, 2011** **DRAFT**

INVENTOR(S) : Blacker et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 822 days

Delete the phrase "by 822 days" and insert – by 920 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
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ARNOLD & PORTER LLP (24126)
ATTN: SV DOCKETING DEPT.
1400 PAGE MILL ROAD
PALO ALTO, CA 94304

MAILED

APR 14 2011

PCT LEGAL ADMINISTRATION

In re Application of	:	
HUBERT et al	:	
Application No.: 11/542,758	:	DECISION ON PETITION
Filing Date: October 3, 2006	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No.: GNE-0163-R1C2	:	

This is a decision on the petition under 37 CFR 1.78(a)(3), filed February 9, 2011, to accept an unintentionally delayed claim under 35 U.S.C. 120 for the benefit of priority to the prior-filed nonprovisional application set forth in the amendment filed concurrently with the instant petition.

The petition is **DISMISSED**.

A petition for acceptance of a late claim for priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in 37 CFR 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) 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.

The petition does not satisfy item (1) above.

MPEP 201.11, Section III. C., states in relevant part,

> Sometimes a pending application is one of a series of applications wherein the pending application is not copending with the first filed application but is copending with an intermediate application entitled to the benefit of the filing date of the first application. . . . The reference to the prior applications must identify all of the prior applications and indicate the relationship (i.e.,

> continuation, divisional, or continuation-in-part) between each nonprovisional application in order to establish copendency throughout the entire chain of prior applications. Appropriate references must be made in each intermediate application in the chain of prior applications. If an applicant desires, for example, the following benefit claim: "this application is a continuation of Application No. C, filed ---, which is a continuation of Application No. B, filed ---, which claims the benefit of provisional Application No. A, filed ---," then Application No. C must have a reference to Application No. B and provisional Application No. A, and Application No. B must have a reference to provisional Application No. A. (Emphasis added.)

In the present case, several of the intermediate applications do not contain appropriate references. Application number 10/753,195 does not contain a proper reference to international application number PCT/US00/33040. Application number 10/165,044 does not contain a proper reference to international application number PCT/US00/33040 and did not include a timely reference to application number 09/455,486. Lastly, application number 09/455,486 does not include a proper reference to provisional application number 60/091,183 and 60/087,520.

Before the petition under 37 CFR 1.78(a)(3) can be granted in the present application, the missing references in the above-noted intermediate applications must be supplied. For a pending application filed on or after November 29, 2000, a petition under 37 CFR 1.78(a)(3) would be required.[1] For an abandoned application filed on or after November 29, 2000, a petition under 37 CFR 1.78(a)(3) would be required. For an application filed before November 29, 2000 which has matured into a U.S. patent, either a certification of correction[2] or reissue application[3] would be required.

Any further correspondence with respect to this matter may be filed electronically via EFS-Web selecting the document description "Petition for review and processing by the PCT Legal Office" or by mail addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Bryan Lin
Legal Examiner
Office of PCT Legal Administration

[1] Applicant should refer to 37 CFR 1.312 regarding the filing of amendments after allowance.
[2] See MPEP 1481.03.
[3] See MPEP 1402.

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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ARNOLD & PORTER LLP (24126)
ATTN: SV DOCKETING DEPT.
1400 PAGE MILL ROAD
PALO ALTO, CA 94304

MAILED

SEP 19 2011

PCT LEGAL ADMINISTRATION

In re Application of :
HUBERT et al :
Application No.: 11/542,758 : DECISION ON PETITION
Filing Date: October 3, 2006 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket No.: GNE-0163-R1C2 :

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed August 22, 2011, to accept an unintentionally delayed claim under 35 U.S.C. 120 for the benefit of priority to the prior-filed nonprovisional application set forth in the amendment filed concurrently with the instant petition.

The petition is **DISMISSED**.

A petition for acceptance of a late claim for priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in 37 CFR 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) 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.

The petition does not satisfy item (1) above.

MPEP 201.11, Section III. C., states in relevant part,

> Sometimes a pending application is one of a series of applications wherein the pending application is not copending with the first filed application but is copending with an intermediate application entitled to the benefit of the filing date of the first application. . . . The reference to the prior applications must identify all of the prior applications and indicate the relationship (i.e.,

> continuation, divisional, or continuation-in-part) between each nonprovisional application in order to establish copendency throughout the entire chain of prior applications. Appropriate references must be made in each intermediate application in the chain of prior applications. If an applicant desires, for example, the following benefit claim: "this application is a continuation of Application No. C, filed ---, which is a continuation of Application No. B, filed ---, which claims the benefit of provisional Application No. A, filed ---," then Application No. C must have a reference to Application No. B and provisional Application No. A, and Application No. B must have a reference to provisional Application No. A. (Emphasis added.)

In the present case, application number 10/165,044 did not include a timely reference to application number 09/455,486. Although a petition under 37 CFR 1.78(a)(3) was filed in application number 10/165,044, a review of Office records revealed that such petition was not granted.

Before the petition under 37 CFR 1.78(a)(3) can be granted in the present application, a proper petition under 37 CFR 1.78(a)(3) must be granted in application number 10/165,044.

Any further correspondence with respect to this matter may be filed electronically via EFS-Web selecting the document description "Petition for review and processing by the PCT Legal Office" or by mail addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Bryan Lin
Legal Examiner
Office of PCT Legal Administration

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DEC 22 2011

PCT LEGAL ADMINISTRATION

ARNOLD & PORTER LLP (24126)
ATTN: SV DOCKETING DEPT.
1400 PAGE MILL ROAD
PALO ALTO, CA 94304

In re Application of :
HUBERT et al :
Application No.: 11/542,758 : DECISION ON PETITION
Filing Date: October 3, 2006 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket No.: GNE-0163-R1C2 :

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed October 19, 2011, to accept an unintentionally delayed claim under 35 U.S.C. 120 for the benefit of priority to the prior-filed nonprovisional application set forth in the amendment filed on August 22, 2011.

The petition is **GRANTED**.

The present nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed nonprovisional application is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Therefore, this is a proper petition under 37 CFR 1.78(a)(3).

A petition for acceptance of a late claim for priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in 37 CFR 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) 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.

The petition complies with the requirements for a grantable petition under 37 CFR 1.78(a)(3) in that (1) a reference to the prior-filed nonprovisional application has been included in an amendment to the first sentence of the specification following the title, as provided by 37 CFR

1.78(a)(2)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) the petition contains a proper statement of unintentional delay. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. 120 to the prior-filed nonprovisional application satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(3) should not be construed as meaning that this application is entitled to the benefit of the prior-filed application. In order for this application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether this application is entitled to the benefit of the earlier filing date.

Any inquiries concerning this decision may be directed to Bryan Lin at (571)272-3303. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This matter is being referred to Technology Center Art Unit 1642 for appropriate action, including consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. 120 to the prior-filed nonprovisional application.

Bryan Lin
Legal Examiner
Office of PCT Legal Administration

ATTACHMENT: Corrected Filing Receipt

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 02-25-12

TO SPE OF : ART UNIT 1624

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/542883 Patent No.: 8048906

CofC mailroom date: 01-24-12

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Note: _____

_____

Angela Green 571.272.9005
CofC Branch 703-756-1814

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriate box.

X **Approved** — All changes apply.

☐ **Approved in Part** — Specify below which changes **do not** apply.

☐ **Denied** — State the reasons for denial below.

Comments: _____

JAMES O. WILSON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

1624

SPE **Art Unit**

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Alexandria, VA 22313-1450
www.uspto.gov

Paper No.

MERCHANT & GOULD PC
P.O. BOX 2903
MINNEAPOLIS MN 55402-0903

MAILED
AUG 10 2011
OFFICE OF PETITIONS

In re Application of :
Barr et al. :
Application No. 11/542,929 : DECISION ON PETITION
Filed: October 2, 2006 : PURSUANT TO
Attorney Docket Number: : 37 C.F.R. § 1.137(B)
40736.0004USI1 :
Title: PHILANTHROPY MANAGEMENT :
AND METRICS SYSTEM :

This is a decision on the petition pursuant to 37 C.F.R. § 1.137(b), filed July 19, 2011, to revive the above-identified application.

This petition pursuant to 37 C.F.R. § 1.137(b) is **GRANTED.**

The above-identified application became abandoned for failure to submit an Appeal Brief within two-months of the filing of a Notice of Appeal, filed on October 13, 2009. No extensions of time pursuant to 37 C.F.R. § 1.136(a) were received. Accordingly, the above-identified application became abandoned on December 14, 2009. A Notice of Abandonment was mailed on June 3, 2010.

A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by:

(1) The reply required to the outstanding Office action or notice, unless previously filed;
(2) The petition fee as set forth in 37 C.F.R. § 1.17(m);
(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information

where there is a question whether the delay was unintentional, and;

(4) Any terminal disclaimer (and fee as set forth in 37 C.F.R. § 1.20(d)) required pursuant to paragraph (d) of this section.

On July 19, 2011, Petitioner filed this petition, along with a Request for Continued Examination (RCE) and the associated fee, an amendment, the petition fee, and the proper statement of unintentional delay. The amendment filed on July 19, 2011 has been accepted as the required reply under 37 C.F.R. § 1.137(b)(1).

As such, the first three requirements of Rule 1.137(b) have been met. The fourth requirement of Rule 1.137(b) is not applicable, as a terminal disclaimer is not required.[1]

The Technology Center will be notified of this decision. The Technology Center's support staff will notify the Examiner of this decision, so that the submission under 37 C.F.R. § 1.114 - the amendment submitted on July 19, 2011 - can be processed in due course.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the present decision to ensure that the revival has been acknowledged by the Technology Center in response to this decision. It is noted that all inquiries with regard to any failure of that change in status should be directed to the Technology Center where that change of status must be effected - **the Office of Petitions cannot effectuate a change of status.**

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.[2] All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

---

1 See Rule 1.137(d).

2 Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for Petitioner's further action(s).

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SANDIA CORPORATION
P O BOX 5800
MS-0161
ALBUQUERQUE NM 87185-0161

MAILED

FEB 22 2011

OFFICE OF PETITIONS

In re Application of	:	
SCHMIDT, et al	:	
Application No. 11/542,974	:	DECISION ON PETITION
Filed: October 4, 2006	:	
Attorney Docket No. SD7561.1S103418	:	

This is a decision on the petition under 37 CFR 1.182, filed November 30, 2006, to change the order of the names of the inventors.

The petition is **GRANTED**.

Office records have been corrected to reflect the change in the order of the named inventors. A corrected Filing Receipt, which sets forth the desired order of the named inventors, accompanies this decision on petition.

The petition fee of $400 under 37 CFR 1.182 has been paid.

This application is being referred to Technology Center AU 3767 for further processing.

Telephone inquiries regarding this decision should be directed to Diane Goodwyn at (571) 272-6735.

Thurman K. Page
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
11/542,974	10/04/2006	3767	1400	SD7561.1S103418	28	3

CONFIRMATION NO. 4151

CORRECTED FILING RECEIPT

20567
SANDIA CORPORATION
P O BOX 5800
MS-0161
ALBUQUERQUE, NM 87185-0161

OC00000004611757

Date Mailed: 02/22/2011

Receipt is acknowledged of this non-provisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections**

Applicant(s)

Carrie Schmidt, Los Lunas, NM;
Jeb Flemming, SE Albuquerque, NM;
Stanley H. Kravitz, Placitas, NM;
David Ingersoll, Albuquerque, NM;

Power of Attorney: The patent practitioners associated with Customer Number 020567

Domestic Priority data as claimed by applicant

This application is a CON of 10/936,360 09/08/2004 PAT 7,132,054

Foreign Applications (You may be eligible to benefit from the **Patent Prosecution Highway** program at the USPTO. Please see http://www.uspto.gov for more information.)

If Required, Foreign Filing License Granted: 10/24/2006

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/542,974**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Hollow microneedle array

Preliminary Class

604

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at http://www.uspto.gov/web/offices/pac/doc/general/index.html.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, http://www.stopfakes.gov. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as

set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

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NIXON PEABODY LLP - PATENT GROUP
1100 CLINTON SQUARE
ROCHESTER, NY 14604

MAILED
FEB 10 2011
OFFICE OF PETITIONS

In re Application of Wei et al. :
Application No. 11/542,999 : Letter
Filing Date: October 4, 2006 :
Atty. Docket No. 43773/130 (METK-00451US) :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28(c) filed September 27, 2010.

The deficiency payment of $405 is hereby accepted.

The change of status to large entity has been entered and made of record.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

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Alexandria, VA 22313-1450
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Thomas Beretich
P.O. Box 686
Yarmouth ME 04096

MAILED

OCT 06 2010

OFFICE OF PETITIONS

In re Application of :
THOMAS MCPHAIL BERETICH :
Application No. 11/543,001 : DECISION GRANTING PETITION
Filed: October 4, 2006 : UNDER 37 CFR 1.78(a)(6)
Attorney Docket No. BERETICH-BILJANA :

This is a decision on the renewed petition under 37 CFR 1.78(a)(6), filed July 20, 2010, to accept an unintentionally delayed claim under 35 U.S.C. 119(e) for the benefit of prior-filed provisional Application No. 60/723, 696, filed October 5, 2005.

The petition is **GRANTED**.

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

(1) the reference required by 35 U.S.C. 119(e) and 37 CFR 1.78(a)(5)(i) to the prior-filed 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 37 CFR 1.78(a)(5)(ii) 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.

Additionally, the instant nonprovisional application must be pending at the time of filing of the reference to the prior-filed provisional application as required by 37 CFR 1.78(a)(5)(ii). Further, the nonprovisional application claiming the benefit of the prior-filed provisional application must have been filed within twelve months of the filing date of the prior-filed provisional application.

All of the above requirements having been satisfied, the late claim for priority under 35 U.S.C. 119(e) is accepted as being unintentionally delayed.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(6) should not be construed as meaning that this application is entitled to the benefit of the filing date of the prior-filed application. In order for this application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. 119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed provisional application, accompanies this decision on petition.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3211. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

The application is being forwarded to Technology Center AU 1795 for consideration by the examiner of the claim under 35 U.S.C. 119(e) for the benefit of priority to the prior-filed provisional application.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
11/543,001	10/04/2006	1795	565	BERETICH-BILJANA	20	1

CONFIRMATION NO. 4747

CORRECTED FILING RECEIPT

Thomas Beretich
P.O. Box 686
Yarmouth, ME 04096

Date Mailed: 10/05/2010

Receipt is acknowledged of this non-provisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections**

Applicant(s)

Thomas McPhail Beretich, Albuquerque, NM;

Power of Attorney: None

Domestic Priority data as claimed by applicant

This appln claims benefit of 60/723,696 10/05/2005

Foreign Applications

If Required, Foreign Filing License Granted: 10/25/2006

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/543,001**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No
**** SMALL ENTITY ****

Title

Thermally enhanced solid-state generator

Preliminary Class

136

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at http://www.uspto.gov/web/offices/pac/doc/general/index.html.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, http://www.stopfakes.gov. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as

set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

LAW OFFICE OF JIM ZEGEER
SUITE 108
801 NORTH PITT STREET
ALEXANDRIA VA 22314

MAILED

DEC 20 2010

OFFICE OF PETITIONS

In re Application of :
Ertem et al. :
Application No. 11/543,261 : DECISION ON PETITION
Filed: October 5, 2006 :
Attorney Docket No. 3534-Z :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 29, 2010, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue fee on or before April 8, 2009, as required by the Notice of Allowance and Fee(s) Due mailed January 8, 2009. Accordingly, the date of abandonment of this application is April 9, 2009. A Notice of Abandonment was mailed May 5, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $755.00,(2) the petition fee of $810.00; and (3) a proper statement of unintentional delay.

Further, it is not apparent whether the statement of unintentional delay was signed by a person who would have been in a position of knowing that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Nevertheless, in accordance with 37 CFR 10.18, the statement is accepted as constituting a certification of unintentional delay. However, in the event that petitioner has no knowledge that the delay was unintentional, petitioner must make such an inquiry to ascertain that, in fact, the delay was unintentional. If petitioner discovers that the delay was intentional, petitioner must notify the Office.

Additionally, it is not apparent whether the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute this patent application. In accordance with 37 CFR 1.34(a), the signature appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he/she is authorized to represent the particular party in whose behalf he/she acts. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

This application is being referred to the Office of Data Management for processing into a patent.

Joan Olszewski
Petitions Examiner
Office of Petitions

cc: Benjamin E. Urcia
Bacon & Thomas, PLLC
625 Slaters Lane, 4th Floor
Alexandria, Virginia 22314

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 10/3/11

TO SPE OF : ART UNIT: 3733

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/543,348 Patent No. 7,686,835

CofC mailroom date 9/21/11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Ernest C. White, LIE

Certificates of Correction Branch

703-756-1814 _____

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriate box.

☒ **Approved**	**All** changes apply.
☐ **Approved in Part**	Specify below which changes **do not** apply.
☐ **Denied**	State the reasons for denial below.

Comments: _____

/Eduardo C. Robert/ — **SPE**

3733 — **Art Unit**

Doc Code: PET.AUTO Document Description: Petition automatically granted by EFS-Web	PTO/SB/140 U.S. Patent and Trademark Office Department of Commerce

Electronic Petition Request	**PETITION TO WITHDRAW AN APPLICATION FROM ISSUE AFTER PAYMENT OF THE ISSUE FEE UNDER 37 CFR 1.313(c)**
Application Number	11543356
Filing Date	04-Oct-2006
First Named Inventor	Jeffrey Carnevali
Art Unit	2835
Examiner Name	ADRIAN WILSON
Attorney Docket Number	NPI-056 CIP 2
Title	PORTABLE DEVICE DOCKING STATION

An application may be withdrawn from issue for further action upon petition by the applicant. To request that the Office withdraw an application from issue, applicant must file a petition under this section including the fee set forth in § 1.17(h) and a showing of good and sufficient reasons why withdrawal of the application from issue is necessary.

APPLICANT HEREBY PETITIONS TO WITHDRAW THIS APPLICATION FROM ISSUE UNDER 37 CFR 1.313(c).

A grantable petition requires the following items:
(1) Petition fee; and
(2) One of the following reasons:
(a) Unpatentability of one or more claims, which must be accompanied by an unequivocal statement that one or more claims are unpatentable, an amendment to such claim or claims, and an explanation as to how the amendment causes such claim or claims to be patentable;
(b) Consideration of a request for continued examination in compliance with § 1.114 (for a utility or plant application only); or
(c) Express abandonment of the application. Such express abandonment may be in favor of a continuing application, but not a CPA under 37 CFR 1.53(d).

Petition Fee

☐ Applicant claims SMALL ENTITY status. See 37 CFR 1.27.

☐ Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

☒ Applicant(s) status remains as SMALL ENTITY.

☐ Applicant(s) status remains as other than SMALL ENTITY

Reason for withdrawal from issue

◯ One or more claims are unpatentable ◉ Consideration of a request for continued examination (RCE) (List of Required Documents and Fees) ◯ Applicant hereby expressly abandons the instant application (any attorney/agent signing for this reason must have power of attorney pursuant to 37 CFR 1.32(b)).
RCE request,submission, and fee. ☒ I certify, in accordance with 37 CFR 1.4(d)(4) that : The RCE request ,submission, and fee have already been filed in the above-identified application on 2011.05.12 ☐ Are attached.
THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES I certify, in accordance with 37 CFR 1.4(d)(4) that I am: ◉ An attorney or agent registered to practice before the Patent and Trademark Office who has been given power of attorney in this application. ◯ An attorney or agent registered to practice before the Patent and Trademark Office, acting in a representative capacity. ◯ A sole inventor ◯ A joint inventor; I certify that I am authorized to sign this submission on behalf of all of the inventors ◯ A joint inventor; all of whom are signing this e-petition ◯ The assignee of record of the entire interest that has properly made itself of record pursuant to 37 CFR 3.71

Signature	/charles j. rupnick/
Name	Charles J. Rupnick
Registration Number	43068

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Decision Date : May 11,2011

In re Application of :

Jeffrey Carnevali

DECISION ON PETITION

UNDER CFR 1.313(c)(2)

Application No : 11543356

Filed : 04-Oct-2006

Attorney Docket No : NPI-056 CIP 2

This is an electronic decision on the petition under 37 CFR 1.313(c)(2), filed May 11,2011 , to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid in this application cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.

Telephone inquiries concerning this decision should be directed to the Patent Electronic Business Center (EBC) at 866-217-9197.

This application file is being referred to Technology Center AU 2835 for processing of the request for continuing examination under 37 CFR 1.114 .

Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

STOEL RIVES LLP - PDX
900 SW FIFTH AVENUE
SUITE 2600
PORTLAND OR 97204-1268

MAILED
MAR 04 2011
OFFICE OF PETITIONS

In re Application of :
BROYLES, SEAN C. :
Application No. 11/543,437 : DECISION ON PETITION
Filed: 10/04/2006 :
Attorney Docket No. 36524/14:1 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 26, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The two-month period for filing an appeal brief under 37 CFR 41.37 (accompanied by the fee required by 37 CFR 41.20(b)(2)), runs from the date of this decision.

This application became abandoned for failure to file a timely and proper reply within the meaning of 37 CFR 1.113 to the final Office action of May 4, 2010. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is August 5, 2010. The Office mailed a Notice of Abandonment on November 22, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Notice of Appeal; (2) the petition fee; and (3) a proper statement of unintentional delay.

This application is being referred to Technology Center AU 3634 to await the filing of an appeal brief or for such other appropriate reply as may be submitted to continue prosecution of the application.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20100826

DATE : August 26, 2010

TO SPE OF : ART UNIT 3655

SUBJECT : Request for Certificate of Correction on Patent No.: 7677377

A response is requested with respect to the accompanying request for a certificate of correction.

Please complete this form and return with file, within **7** days to:
Certificates of Correction Branch - PK 3-910
Palm location **7590** - Tel. No. 305-8201

With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Thank You For Your Assistance **Certificates of Correction Branch**

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

☒ **Approved** **All** changes apply.

☐ **Approved in Part** Specify below which changes **do not** apply.

☐ **Denied** State the reasons for denial below.

Comments:

SPE: /David D. Le/ **Art Unit** 3655

APPROVED: /D.L./
08/26/2010

PTO/SB/44 (09-07)
Approved for use through 08/31/2010. OMB 0651-0033
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.
(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 7,677,377 B2

APPLICATION NO.: 11/543,471

ISSUE DATE : March 16, 2010

INVENTOR(S) : Martin P. Keating

It is certified that an error appears or errors appear in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

Column 1,
Line 56, "positioned" should be -- position --.

Column 2,
Line 32, "ends" should be -- end --.

Column 2,
Line 44, "have been stamped" should be -- that have been stamped --.

Column 3, Claim 2, "described claim" should be -- described in claim --.
Column 3, Claim 3, "described claim" should be -- described in claim --.
Column 3, Claim 4, "described claim" should be -- described in claim --.
Column 3, Claim 5, "described claim" should be -- described in claim --.
Column 3, Claim 6, "described claim" should be -- described in claim --.
Column 3, Claim 7, "described claim" should be -- described in claim --.

MAILING ADDRESS OF SENDER (Please do not use customer number below):
Philip R. Warn, Esq.
Warn Partners, P.C.
P.O. Box 70098
Rochester Hills, MI 48307

This collection of information is required by 37 CFR 1.322, 1.323, and 1.324. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Attention Certificate of Corrections Branch, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

APPROVED: /D.L./
08/26/2010

PTO/SB/44 (09-07)
Approved for use through 08/31/2010. OMB 0651-0033
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.
(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 7,677,377 B2

APPLICATION NO.: 11/543,471

ISSUE DATE : March 16, 2010

INVENTOR(S) : Martin P. Keating

It is certified that an error appears or errors appear in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

Column 3, Claim 8, "described claim" should be -- described in claim --.
Column 3, Claim 10, "described claim" should be -- described in claim --.
Column 3, Claim 11, "described claim" should be -- described in claim --.
Column 4, Claim 13, "described claim" should be -- described in claim --.
Column 4, Claim 14, "described claim" should be -- described in claim --.
Column 4, Claim 15, "described claim" should be -- described in claim --.
Column 4, Claim 16, "described claim" should be -- described in claim --.

******DO NOT PUT ANY ERRORS BELOW THIS LINE - PTO SEAL GOES BELOW**********

MAILING ADDRESS OF SENDER (Please do not use customer number below):
Philip R. Warn, Esq.
Warn Partners, P.C.
P.O. Box 70098
Rochester Hills, MI 48307

This collection of information is required by 37 CFR 1.322, 1.323, and 1.324. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Attention Certificate of Corrections Branch, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: 20100826

DATE : **8-19-10**

TO SPE OF : ART UNIT **3655**

SUBJECT : Request for Certificate of Correction for Appl. No.: **11543471** Patent No.: **7677377**

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (C of C)
Randolph Square – 9D10-E
Palm Location 7580

Omega Lewis
Certificates of Correction Branch
703-756-1575

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

☒ **Approved**	**All** changes apply.
☐ **Approved in Part**	Specify below which changes **do not** apply.
☐ **Denied**	State the reasons for denial below.

Comments: _____

_____

_____

_____

_____

/David D. Le/ — **SPE**

3655 — **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

NICHOLAS ALCOV
2398 CALLENDER RD.
ARROYO GRANDE, CA 93420

MAILED

FEB 17 2011

OFFICE OF PETITIONS

In re Application of :
Nicholas Alcov :
Application No. 11/543,656 : ON PETITION
Filed: October 6, 2006 :
Attorney Docket No.: None :

This is a decision in response to the petition, filed November 17, 2010, which is being treated under the provisions of 37 CFR 1.181 to withdraw the holding of abandonment.

The petition is **DISMISSED**.

Any request for reconsideration of this decision should be filed within two (2) months from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment."

This application became abandoned as a result of petitioner's failure to file an appeal brief (and fee required by 37 CFR 41.20(b)(2)) within the time period provided in 37 CFR 41.37(a)(1). As an appeal brief (and appeal brief fee) was not filed within two (2) months of the Notice of Appeal filed March 30, 2009, and no extensions of time under the provisions of 37 CFR 1.136(a) were obtained, the appeal was dismissed and the proceedings as to the rejected claims were terminated. See 37 CFR 1.197(b). As no claim was allowed, the application became abandoned on May 31, 2009. A Notice of Abandonment was mailed on November 17, 2009.

Petitioner argues, in effect, that the abandonment should be withdrawn since a timely response in the form of a Request for Continued Examination (RCE) was filed on November 11, 2009. Petitioner explains that "a request was made to apply the appeal fees to the RCE process."

Petitioner's argument is not well taken. The Notice of Appeal fee was due when paid and there are no provisions in the rule to reapply a fee that is required for another purpose. Consequently, the record shows that in view of the Notice Appeal filed March 30, 2009, the shortened statutory response period was already set to expire after midnight May 30, 2009. Any extension of time to save the application from abandonment should have been filed by October 30, 2009. It is noted that applicant submitted a 1-month petition for extension of time on July 13, 2009, which was insufficient to extend the response period through July 13, 2009. A 2-month extension was required to extend the response period from May 30, 2009 to July 13, 2009. However, on August 31, 2009, applicant submitted an appropriate petition for extension of time and fee of $490, which effectively extended the original response period to August 31, 2009, since

August 30, 2009 was a Sunday. However, since the maximum period for reply ended after midnight October 30, 2009, the RCE filed on November 16, 2009 using a Certificate of Mailing under 37 CFR 1.8 dated November 11, 2009, was untimely.

In view of the above, the request to withdraw the holding of abandonment cannot be granted.

Petitioner is strongly encouraged to consider filing a petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application instead of filing a renewed petition under 37 CFR 1.181 or a petition under 37 CFR 1.137(a).

Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the $810 petition fee.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Petitioner should note that the $405 RCE filing fee is subject to refund, unless petitioner decides to revive this application in favor of the RCE. It also appears petitioner is entitled to a refund of the $65 overpayment of the extension fees. Any request for refund must (1) state the amount being requested, (2) include a copy of this decision, and (3) be mailed to Mail Stop 16, Director of the U.S. Patent and Trademark Office, P. O. Box 1450, Alexandria, VA 22313-1450 or faxed to the Customer Service Help Desk at (571) 273-6500.

Further correspondence with respect to this decision should be delivered through one of the following mediums:

By mail:
Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand:
Customer Service Window
Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax:
(571) 273-8300
ATTN: Office of Petitions

By Internet: EFS-Web[1]

Any questions concerning this matter may be directed to the undersigned at (571) 272-3204.

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

[1] www.uspto.gov/ebc/efs_help.html (for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197)

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

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SEP 22 2010

OFFICE OF PETITIONS

FISH & RICHARDSON P.C.
P.O. BOX 1022
MINNEAPOLIS MN 55440-1022

In re Patent No. 7,788,126 :
Issued: August 31, 2010 :
Application No. 11/543,660 : PATENT TERM ADJUSTMENT
Filing or 371(c) Date: October 5, 2006 :
Dkt. No.: 12587-019003/01343-52/US :

This is a decision on the request for reconsideration of decision on application for patent term adjustment mailed July 27, 2010. The instant request was filed August 27, 2010 and asserts entitlement to an additional adjustment of 150 days in connection with the mailing of the Notice of Allowance on December 2, 2009.

The petition is hereby **DISMISSED**.

The above-identified application matured into U.S. Pat. No. 7,788,126 on August 31, 2010. The patent issued with zero days of patent term adjustment. The instant request was timely submitted within two months of the mail date of the decision on petition mailed July 27, 2010, prior to the issuance of the instant patent. Patentee continues to argue that the patent is entitled to an adjustment of 150 days pursuant to 37 CFR 1.702(a)(2) in connection with the mailing of the Notice of Allowance on December 2, 2009.

The petition has been carefully considered, but is not persuasive.

As previously set forth on decision, a non-final Office action was mailed March 18, 2008. The record establishes that non-compliant replies were filed May 21, 2008, September 24, 2008, and March 5, 2009. The record further establishes that a compliant reply was filed November 25, 2009. The Notice of Allowance was mailed December 2, 2009, which is within four months of the date of submission of the compliant reply filed November 25, 2009.

There is no indication in the record that the any of the Notices of Non-Complaint Amendment mailed August 25, 2008, February 13, 2009, and May 27, 2009 were vacated and withdrawn from the record by the Director of the Technology Center. Further, there is no indication in the record that the actions of the examiner were properly contested before the Director of the Technology Center by way of petition under 37 CFR 1.181. Thus, in relying on the record, it must be found that the first compliant reply was filed November 25, 2009. As the Notice of Allowance was mailed within four months of that date, the patent is not entitled to further adjustment.

Even assuming arguendo that the patent were entitled to an adjustment of 150 days in connection with the mailing of the Notice of Allowance, upon issuance, the patent would remain subject to

zero days of patent term adjustment. This is because were the patent entitled to 150 days pursuant to 37 CFR 1.702(a)(2), 57 days of the 150 days would overlap with the period of adjustment of 330 days accorded pursuant to 37 CFR 1.702(b), leaving a net adjustment of 93 days. Thus, assuming arguendo a net of 93 days under § 1.702(a)(2) + 104 days under § 1.702(a)(1) + 330 days under § 1.702(b) – 553 days of applicant delay under § 1.704(b), the result would remain the same, zero days of patent term adjustment.

In view thereof, no adjustment to the patent term will be made.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown
Petitions Attorney
Office of Petitions

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Commissioner for Patents
United States Patent and Trademark Office
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WADDEY & PATTERSON, P.C.
1600 DIVISION STREET, SUITE 500
NASHVILLE TN 37203

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OFFICE OF PETITIONS

In re Application of :
Julian Norley et al. :
Application No. 11/543,714 : DECISION ON PETITION
Filed: October 5, 2006 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket No: P1083-2/N3690 :

This is a decision on the petition filed September 22, 2010 to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of prior-filed non-provisional application 10/685,103 filed October 14, 2003. The petition is being treated under 37 CFR 1.78(a)(3),

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed 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 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The amendment submitted concurrently with the instant petition as drafted is unacceptable and, therefore, is not considered a proper reference under 37 CFR 1.78(a)(2)(i). In this regard, the amendment is physically part of the instant petition and, as such, does not comply with 37 CFR 1.121, 1.52, or 1.4(c). Note that 37 CFR 1.121 states that amendments are made by filing a paper, in compliance with § 1.52, directing that specified amendments be made. The pertinent section of 37 CFR 1.52 states that

the claim (in this case, the claim for priority), must commence on a separate physical sheet. 37 CFR 1.4(c) states that each distinct subject must be contained in a separate paper since different matters may be considered by different branches of the United States Patent and Trademark Office.

Furthermore, petitioner is advised that the reference, "This application claims priority under 35 U.S.C. §120 from U.S. Patent Application Serial No. 10/685,103 filed October 14, 2003....." does not comply with 37 CFR 1.78(a)(2)(i) in that the reference does not state the relationship between 11/543,714, the instant application, and 10/685,103.

Before the petition under 37 CFR § 1.78(a)(3) can be granted, a renewed petition and either a Supplemental Application Data Sheet (signed in compliance with 37 CFR 1.33(b) or a substitute amendment (complying with the provisions of 37 CFR 1.121 and in compliance with 37 CFR 1.78(a)(2)(i)) to correct the above matters are required.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Customer Service Window
Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: (571) 273-8300
ATTN: Office of Petitions

Any questions concerning this matter may be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212.

Christopher Bottorff
Supervisor
Office of Petitions

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1600 DIVISION STREET, SUITE 500
NASHVILLE TN 37203

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JAN 07 2011

OFFICE OF PETITIONS

In re Application of :
Julian Norley et al. :
Application No. 11/543,714 : DECISION ON PETITION
Filed: October 5, 2006 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket No: P1083-2/N3690 :

This is a decision on the renewed petition under 37 CFR 1.78(a)(3) filed December 1, 2010, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of prior-filed non-provisional application 10/685,103 filed October 14, 2003. The petition is being treated under 37 CFR 1.78(a)(3).

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed 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 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

A petition filed September 22, 2010 was dismissed in a decision mailed November 4, 2010 because the amendment submitted concurrently with the petition as drafted was unacceptable and, therefore, was not considered a proper reference under 37 CFR 1.78(a)(2)(i). In this regard, the amendment was physically part of the petition and, as such, did not comply with 37 CFR 1.121, 1.52, or 1.4(c). Note that 37 CFR 1.121 states that amendments are made by filing a paper, in compliance with § 1.52, directing that specified amendments be made. The pertinent section of 37 CFR 1.52 states that the claim (in this case, the claim for priority), must commence on a separate physical sheet. 37 CFR 1.4(c) states that each distinct subject must be contained in a separate paper since different matters may be considered by different branches of the United States Patent and Trademark Office.

Additionally, the petition was dismissed as it did not comply with 37 CFR 1.78(a)(2)(i) in that the reference did not state the relationship between 11/543,714, the instant application, and 10/685,103.

Comes now petitioner with the instant renewed petition and an amendment to amend the specification to include the reference to the prior-filed application required by 35 U.S.C. §120 and 37 C.F.R. §1.78(a)(2).

All the above requirements having been satisfied, the late claim for priority under 35 U.S.C. § 120 is accepted as being unintentionally delayed.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(3) should not be construed as meaning that this application is entitled to the benefit of the prior-filed application. In order for this application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed nonprovisional application, accompanies this decision on petition.

Any inquiries concerning this decision may be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This matter is being referred to Technology Center Art Unit 1746 for appropriate action on the amendment filed December 1, 2010, including consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed application.

Christopher Bottorff
Supervisor
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
11/543,714	10/05/2006	1746	1700	P1083-2/N3690	34	3

CONFIRMATION NO. 5869

CORRECTED FILING RECEIPT

23456
WADDEY & PATTERSON, P.C.
1600 DIVISION STREET, SUITE 500
NASHVILLE, TN 37203

OC000000045273643

Date Mailed: 01/05/2011

Receipt is acknowledged of this non-provisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections**

Applicant(s)

Julian Norley, Chagrin Falls, OH;
Martin David Smalc, Parma, OH;
Joseph Paul Capp, Strongsville, OH;
Timothy Clovesko, North Olmsted, OH;

Power of Attorney: The patent practitioners associated with Customer Number 23456

Domestic Priority data as claimed by applicant

This application is a CON of 10/685,103 10/14/2003 PAT 7,138,029

Foreign Applications

If Required, Foreign Filing License Granted: 10/31/2006

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/543,714**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Heat spreader for plasma display panel

Preliminary Class

156

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at http://www.uspto.gov/web/offices/pac/doc/general/index.html.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, http://www.stopfakes.gov. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as

set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

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FISH & RICHARDSON P.C.
PO BOX 1022
MINNEAPOLIS MN 55440-1022

In re Patent No. 7,912,829 : LETTER REGARDING
Issued: March 22, 2011 : PATENT TERM ADJUSTMENT
Application No. 11/543,721 : and
Filed: October 4, 2006 : NOTICE OF INTENT TO ISSUE
Attorney Docket No. 16113-0234001 : CERTIFICATE OF CORRECTION

This is a decision on the APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d) filed on May 20, 2011, requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted from 118 to 224 days.

The request for review of the patent term adjustment is **GRANTED** to the extent indicated herein.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of NINETY-ONE (91) days.

Patentees are given **THIRTY (30) DAYS or ONE (1) MONTH, whichever is longer,** from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

On March 22, 2011, the above-identified application matured into U.S. Patent No. 7,912,829 with a patent term adjustment of 118 days. On May 20, 2011, Patentees submitted the instant application. Patentees disclose that the patent term adjustment of 118 days indicated on the front of the patent is incorrect because Applicant Delay of 27 days for delay from July 31, 2008 to August 26, 2008 should have been accorded pursuant to 37 C.F.R. § 1.704(c)(8). Patentee also maintains that the Office incorrectly calculated Office delay pursuant to 37 CFR 1.702(b). Patentee contends that the Office erred in subtracting from the "B delay" a period of time that was not "consumed by continued examination of the application." Specifically, Patentee argues that (after the filing of the request for continued examination) the Office mailed a Notice of Allowance on November 10, 2010, thereby closing examination of the application on that date. Thus, Patentee argues no continued examination took place during the 133 day period from November 10, 2010 (the mailing date of the Notice of Allowance) until March 22, 2011 (the date the patent was issued). As such, Patentee maintains that the "B delay" should include the 133 days and be increased from 0 to 133 days. Patentee concludes

that the correct patent term adjustment is 224 days (the sum of 148 days of "A delay" and 133 days of "B delay" minus 57 days of Applicant delay).

RELEVANT STATUTE AND REGULATIONS

37 CFR 1.704(c)(8) provides that:

> the submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed;

The statutory basis for calculation of "B delay" is 35 U.S.C. 154(b)(1)(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, which provides that:

Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including —

(i) any time consumed by continued examination of the application requested by the applicant under section 132(b);

(ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or

(iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued.

The implementing regulation, 37 CFR 1.702(b) provides that:

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including:

(1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b);

(2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a);

(3) Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181;
(4) Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or
(5) Any delay in the processing of the application by the Office that was requested by the applicant.

OPINION

Applicant's arguments have been considered. The response in the form of Drawings filed August 26, 2008 was filed after the filing of a response to the non-Final Office Action on July 30, 2008. In this instance, the filing of the Drawings on August 26, 2008 is considered a failure to engage under 1.704(c)(8). The Drawings were not expressly requested by the examiner.

Pursuant to 37 CFR 1.704(c)(8) a period of reduction of 27 days counting the number of days in the period beginning on the day after the initial reply was filed, July 30, 2008 and ending on the date of filing of the last supplemental paper, the Drawings filed August 26, 2008. Accordingly, a period of reduction of 27 days is being entered.

As it relates to the calculation of "B delay, patentee's arguments have been considered, but not found persuasive. The Office calculated the period of "B delay" pursuant to 35 U.S.C. 154(b)(1)(B)(i) and 37 CFR 1.702(b)(1) as 0 days based on the application having been filed under 35 U.S.C. 111(a) on October 4, 2006 and the patent not having issued as of the day after the three year date, October 4, 2009, and requests for continued examination under 132(b) having been filed on January 23, 2009, September 21, 2009, August 20, 2010 and October 29, 2010. In other words, the 133-day period beginning on the date of mailing of the notice of allowance to the date of issuance of the patent was considered time consumed by continued examination of an application under 35 U.S.C. 132(b) and was not included in the "B delay."

The Office's calculation of "B delay" is correct. The "B delay" is an adjustment entered if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed. However, the adjustment does not include, among other things, any time consumed by continued examination of the application at the request of the applicant under 35 U.S.C. 132(b)[1].

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[1] Pursuant to 35 U.S.C. 132(b) , 37 CFR 1.114 provides for continued examination of an application, as follows:

(a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:
(1) Payment of the issue fee, unless a petition under § 1.313 is granted;
(2) Abandonment of the application; or
(3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil

So, with respect to calculating the "B delay" where applicant has filed a request for continued examination, the period of adjustment is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the number of days in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

Further, counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentee does not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is not any time consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56366, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

Patentee's argument that the period of time after the issuance of a notice of allowance on a request for continued examination is not "any time consumed by continued examination requested by the applicant under section 132(b)" within the meaning of 35 U.S.C. 154(b)(1)(B)(i) is not availing. This limitation is not supported by the statutory language. Garcia v. United States, 469 U.S. 70, 75 (1984) ("only the most extraordinary showing of contrary intentions from [legislative history] would justify a limitation on the 'plain meaning' of the statutory language"). BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning"). The statute provides for a guarantee of no more than 3-year application pendency, by providing for an adjustment in the patent term:

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action is terminated.

(b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

First, "Subject to the limitations of paragraph (2)," means that the limitations of paragraph 2 apply to this paragraph's adjustment of patent term. That is, the day-to-day extension of patent term for pendency beyond the 3 year period is restricted as follows: 1) "B delay" cannot accrue for days of "A delay" that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

Second, "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of the United States) after the application filing date before an adjustment will accrue for "B delay."

Third, "not including- (i) any time consumed by continued examination of the application requested by the applicant under section 132(b); (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), meaning that the three-year period does not include "any time consumed by" or "any delay in processing," as specified in clauses (i)-(iii). This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, 580 F.Supp.2d 138, 88 U.S.P.Q.2d 1538 (D.D.C., September 30, 2008), because the clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate this effect, the statute, *inter alia*, grants adjustments of patent term whenever the patent prosecution takes more than three years, regardless of the reason. The time consumed by prosecution of the application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. The time it takes to prosecute the

application ends not with the mailing of the notice of allowance, but with the issuance of the patent.

Thus, not including "any time consumed by" means not including any days used to prosecute the application as specified in clauses (i)-(ii)[2]. Clause (i) specifies "any time consumed by continued examination of the application requested by the applicant under section 132(b)." Clause (ii) specifies "any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court." "Time" in the context of this legislation throughout refers to days. "Consumed by" means used by or used in the course of. *Websters Collegiate Dictionary*, (11th ed.). The "any" signifies that the days consumed by are "any" of the days in the pendency of the application, and not just days that occur after the application has been pending for 3 years. As such, "any time consumed by" refers to any days used in the course of 1) continued examination of the application under section 132(b)(the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, and 4) appellate review. Thus, that 3-year period given to the Office to issue a patent before an adjustment will accrue for "B delay" does not include any days used in the course of or any time consumed by clauses (i)-(ii), including any time consumed by the filing of a request for continued examination.

Fourth, "the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued" meaning that the consequence of this failure is that after "the end of that 3-year period" an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination

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[2] Clause (iii) provides for not including (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued. It is noted that paragraph (3)(C) allows with an adequate showing by applicant for reinstatement of no more than 3 months of the patent term reduced for applicant delay in taking in excess of three months to respond.

process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the law. See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in Blacklight Power, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. See BlackLight Power, Inc. v. Rogan, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously been issued for the application. See In re Drawbaugh, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is

abandoned). See 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures[3] permit the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See 37 CFR 1.114(a)(1).

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the notice of allowance. All the time the application is pending from the date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that request. Applicant has gotten further prosecution of the application without having to file a continuing application under 37 CFR 1.53(b).

All of the continued examination pursuant to the filing of the request by the applicant is properly excluded from the delay attributed to the Office. 35 U.S.C. 154(b)(1)(B)'s guarantee of a total application pendency of no more than three years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

In this instance, requests for continued examination were filed on January 23, 2009, September 21, 2009, August 20, 2010 and October 29, 2010 and the patent issued by virtue of those requests on March 22, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on January 23, 2009 and ending on March 22, 2011 is not included in calculating Office delay.

CONCLUSION

In view of the above, the patent should have issued with a patent term adjustment of ninety-one (91) days.

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[3] Thus, on occasion, even where a request for continued examination has already been filed and a notice of allowance issued pursuant to that request, applicant may file a further request for continued examination.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **ninety-one (91)** days.

Telephone inquiries specific to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,912,829 B1

DATED : March 22, 2011

INVENTOR(S) : Adam B. Mathes

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (118) days

Delete the phrase "by 118 days" and insert – by 91 days--

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MAILED

AUG 25 2011

OFFICE OF PETITIONS

In re Patent No. 7,912,829
Issued: March 22, 2011
Application No. 11/543,721
Filed: October 4, 2006
Attorney Docket No. 16113-0234001

: DECISION ON REQUEST FOR
: RECONSIDERATION OF
: PATENT TERM ADJUSTMENT

This is a decision on the request for reconsideration filed August 1, 2011, pursuant to 37 CFR §1.705(d), requesting that the patent term adjustment indicated on the above-identified patent be corrected from 1104 days to 1249 days.

This petition is hereby **DENIED**. This decision is a final agency action within the meaning of 5 U.S.C. § 704 for purposes of seeking judicial review. *See,* MPEP 1002.02.

The patent term adjustment indicated in the previous decision mailed July 1, 2011 is properly indicated.

Patentee maintains that the Office incorrectly calculated Office delay pursuant to 37 CFR 1.702(b). Patentee contends that the Office erred in subtracting from the "B delay" a period of time that was not "consumed by continued examination of the application." Specifically, Patentee argues that (after the filing of the request for continued examination) the Office mailed a Notice of Allowance on November 10, 2010, thereby closing examination of the application on that date. Thus, Patentee argues no continued examination took place during the 133 day period from November 10, 2010 (the mailing date of the Notice of Allowance) until March 22, 2011 (the date the patent was issued). As such, Patentee maintains that the "B delay" should include the 133 days and be increased from 0 to 133 days.

RELEVANT STATUTE AND REGULATIONS

The statutory basis for calculation of "B delay" is 35 U.S.C. 154(b)(1)(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, which provides that:

Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including —

(i) any time consumed by continued examination of the application requested by the applicant under section 132(b);

(ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or

(iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued.

The implementing regulation, 37 CFR 1.702(b) provides that:

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including:

(1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b);

(2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a);

(3) Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181;

(4) Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or

(5) Any delay in the processing of the application by the Office that was requested by the applicant.

OPINION

Applicant's arguments have been considered.

The Office calculated the period of "B delay" pursuant to 35 U.S.C. 154(b)(1)(B)(i) and 37 CFR 1.702(b)(1) as 0 days based on the application having been filed under 35 U.S.C. 111(a) on October 4, 2006 and the patent not having issued as of the day after the three year date, October 4, 2009, and requests for continued examination under 132(b) having been filed on January 23, 2009, September 21, 2009, August 20, 2010 and October 29, 2010. In other words, the 133-day period beginning on the date of mailing of the notice of allowance to the date of issuance of the patent was considered time consumed by continued examination of an application under 35 U.S.C. 132(b) and was not included in the "B delay."

The Office's calculation of "B delay" is correct. The "B delay" is an adjustment entered if the issuance of the patent was delayed due to the failure of the Office to issue a

patent within three years after the date on which the application was filed. However, the adjustment does not include, among other things, any time consumed by continued examination of the application at the request of the applicant under 35 U.S.C. 132(b)[1]. So, with respect to calculating the "B delay" where applicant has filed a request for continued examination, the period of adjustment is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the number of days in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

Further, counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentee does not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is not any time consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56366, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

Patentee's argument that the period of time after the issuance of a notice of allowance on a request for continued examination is not "any time consumed by continued

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[1] Pursuant to 35 U.S.C. 132(b) , 37 CFR 1.114 provides for continued examination of an application, as follows:

(a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:

(1) Payment of the issue fee, unless a petition under § 1.313 is granted;

(2) Abandonment of the application; or

(3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

(b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

examination requested by the applicant under section 132(b)" within the meaning of 35 U.S.C. 154(b)(1)(B)(i) is not availing. This limitation is not supported by the statutory language. Garcia v. United States, 469 U.S. 70, 75 (1984) ("only the most extraordinary showing of contrary intentions from [legislative history] would justify a limitation on the 'plain meaning' of the statutory language"). BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning"). The statute provides for a guarantee of no more than 3-year application pendency, by providing for an adjustment in the patent term:

First, "Subject to the limitations of paragraph (2)," means that the limitations of paragraph 2 apply to this paragraph's adjustment of patent term. That is, the day-to-day extension of patent term for pendency beyond the 3 year period is restricted as follows: 1) "B delay" cannot accrue for days of "A delay" that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

Second, "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of the United States) after the application filing date before an adjustment will accrue for "B delay."

Third, "not including- (i) any time consumed by continued examination of the application requested by the applicant under section 132(b); (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), meaning that the three-year period does not include "any time consumed by" or "any delay in processing," as specified in clauses (i)-(iii). This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, 580 F.Supp.2d 138, 88 U.S.P.Q.2d 1538 (D.D.C., September 30, 2008),

because the clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate this effect, the statute, *inter alia*, grants adjustments of patent term whenever the patent prosecution takes more than three years, regardless of the reason. The time consumed by prosecution of the application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. The time it takes to prosecute the application ends not with the mailing of the notice of allowance, but with the issuance of the patent.

Thus, not including "any time consumed by" means not including any days used to prosecute the application as specified in clauses (i)-(ii)[2]. Clause (i) specifies "any time consumed by continued examination of the application requested by the applicant under section 132(b)." Clause (ii) specifies "any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court." "Time" in the context of this legislation throughout refers to days. "Consumed by" means used by or used in the course of. *Websters Collegiate Dictionary*, (11th ed.). The "any" signifies that the days consumed by are "any" of the days in the pendency of the application, and not just days that occur after the application has been pending for 3 years. As such, "any time consumed by" refers to any days used in the course of 1) continued examination of the application under section 132(b)(the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, and 4) appellate review. Thus, that 3-year period given to the Office to issue a patent before an adjustment will accrue for "B delay" does not include any days used in the course of or any time consumed by clauses (i)-(ii), including any time consumed by the filing of a request for continued examination.

Fourth, "the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued" meaning that the consequence of this failure is that after "the end of that 3-year period" an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.

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[2] Clause (iii) provides for not including (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued. It is noted that paragraph (3)(C) allows with an adequate showing by applicant for reinstatement of no more than 3 months of the patent term reduced for applicant delay in taking in excess of three months to respond.

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the law. See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in Blacklight Power, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. See BlackLight Power, Inc. v. Rogan, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is

the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously been issued for the application. See In re Drawbaugh, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures[3] permit the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See 37 CFR 1.114(a)(1).

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the notice of allowance. All the time the application is pending from the date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that request. Applicant has gotten further prosecution of the application without having to file a continuing application under 37 CFR 1.53(b).

All of the continued examination pursuant to the filing of the request by the applicant is properly excluded from the delay attributed to the Office. 35 U.S.C. 154(b)(1)(B)'s guarantee of a total application pendency of no more than three years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

In this instance, requests for continued examination were filed on January 23, 2009, September 21, 2009, August 20, 2010 and October 29, 2010 and the patent issued by virtue of those requests on March 22, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the

[3] Thus, on occasion, even where a request for continued examination has already been filed and a notice of allowance issued pursuant to that request, applicant may file a further request for continued examination.

period beginning on January 23, 2009 and ending on March 22, 2011 is not included in calculating Office delay.

CONCLUSION

Accordingly, the decision on application for patent term adjustment has been reconsidered and the request for additional patent term is DENIED.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212.

Anthony Knight
Director
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/543,798	10/06/2006	Hyuk Min Lee	069576-0652	6204

20277 7590 05/11/2011

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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May 10, 2011

MCDERMOTT WILL & EMERY LLP
600 13TH STREET, N.W.
WASHINGTON DC 20005-3096

In re Application of :
LEE, HYUK MIN, **et al.** : **DECISION ON PETITION**
Application No. **11/543798** :
Filed: **10/06/2006** :
Attorney Docket No: **069576-0652**

This is a decision on the Petition to Accept Color Drawings under 37 C.F.R 1.84 (a) (2), received in the United States Patent and Trademark Office (USPTO) February 28, 2008.

The petition is **DISMISSED.**

A grantable petition under 37 C.F.R. 1.84(a) (2) must be accompanied by the following.

1. The fee set forth under 37 C.F.R. 1.17(h),
2. Three (3) sets of the color drawings in question, (One (1) set for EFW filings, and
3. The specification containing the following language as the first paragraph in that portion of the specification relating to the brief description of the drawings

"The patent or application file contains at least one drawing executed in color. Copies of this patent or patent application publication with color drawing(s) will be provided by the Office upon request and payment of the necessary fee."

The petition did not meet the following requirement(s). 1 ☐ 2 ☑ 3 ☐
A renewed petition filed under 37 C.F.R. 1.84 (a) (2) must be filed within TWO (2) MONTHS of this decision. If a renewed petition is not filed within the TWO (2) Months of this decision the drawings will be printed in black and white.

Telephone inquires relating to this decision may be directed to the undersigned in the Office of Data Management at 571- 576-1565.

/Bernadette Queen/
Quality Control Specialist
Office of Data Management
Publications Branch

Docket No.: 069576-0652 **PATENT**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of	:	Customer Number: 20277
Hyuk Min LEE, et al.	:	Confirmation Number: 6204
Application No.: 11/543,798	:	Group Art Unit: 2891
Filed: October 06, 2006	:	Examiner: Minchul Yang

For: NITRIDE-BASED SEMICONDUCTOR LIGHT EMITTING DIODE AND METHOD OF MANUFACTURING THE SAME

STATEMENT IN RESPONSE TO THE DECISION ON PETITION

Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Decision on Petition dated May 10, 2011, Applicants submit this Statement requesting the Patent Office to use black and white drawings instead of colored drawings for the instant application. The formal drawings were previously submitted to the Patent Office on October 6, 2006, and again on March 10, 2011 and the petition fee was paid on February 28, 2008 and hence no fees are due in connection with this submission. A copy of the Decision on Petition is enclosed.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP

Hosang Lee
Registration No. L0295

600 13th Street, N.W.
Washington, DC 20005-3096
Phone: 202.756.8000 HL:ss
Facsimile: 202.756.8087
Date: June 3, 2011

Please recognize our Customer No. 20277 as our correspondence address.

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/543,798	10/06/2006	Hyuk Min Lee	069576-0652	6204

20277 7590 05/11/2011
MCDERMOTT WILL & EMERY LLP
600 13TH STREET, N.W.
WASHINGTON, DC 20005-3096

RECEIVED
MAY 13 2011
McDermott Will & Emery LLP
DC Office

EXAMINER	
YANG, MINCHUL	
ART UNIT	PAPER NUMBER
2891	

MAIL DATE	DELIVERY MODE
05/11/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

May 10, 2011

MCDERMOTT WILL & EMERY LLP
600 13TH STREET, N.W.
WASHINGTON DC 20005-3096

In re Application of :
LEE, HYUK MIN, **et al.** : **DECISION ON PETITION**
Application No. **11/543798** :
Filed: **10/06/2006** :
Attorney Docket No: **069576-0652**

This is a decision on the Petition to Accept Color Drawings under 37 C.F.R 1.84 (a) (2), received in the United States Patent and Trademark Office (USPTO) February 28, 2008.

The petition is **DISMISSED.**

A grantable petition under 37 C.F.R. 1.84(a) (2) must be accompanied by the following.

1. The fee set forth under 37 C.F.R. 1.17(h),
2. Three (3) sets of the color drawings in question, (One (1) set for EFW filings, and
3. The specification containing the following language as the first paragraph in that portion of the specification relating to the brief description of the drawings

"The patent or application file contains at least one drawing executed in color. Copies of this patent or patent application publication with color drawing(s) will be provided by the Office upon request and payment of the necessary fee."

The petition did not meet the following requirement(s). 1 ☐ 2 ☑ 3 ☐
A renewed petition filed under 37 C.F.R. 1.84 (a) (2) must be filed within TWO (2) MONTHS of this decision. If a renewed petition is not filed within the TWO (2) Months of this decision the drawings will be printed in black and white.

Telephone inquires relating to this decision may be directed to the undersigned in the Office of Data Management at 571- 576-1565.
703 756

/Bernadette Queen/
Quality Control Specialist
Office of Data Management
Publications Branch

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Decision Date:	December 28, 2011
In re Patent No.	8066891
Issue Date:	29-Nov-2011
Application No	11543812
Filed date	06-Oct-2006
Attorney Docket No	123771.01

DECISION ON REQUEST
UNDER 37 CFR 3.81(b)

This is an electronic decision on the request filed December 28, 2011 under 37 CFR 3.81(b) to correct the name of the assignee of the above-identified patent by way of a Certificate of Correction.

Petitioner request that the listed assignment information be replace with updated assignment information.
Assignment Information Currently Listed As:

Dai Nippon Printing Co., Ltd., Tokyo (JP)

Change Assignment Information to the Following:

Dai Nippon Printing Co., Ltd., Tokyo (JP); Nippon Steel Chemical Co., Ltd., Tokyo (JP)

The request is GRANTED.

Telephone inquiries concerning this decision may be directed to the the Patent Electronic Business Center (EBC) at 866-217-9197.

Inquiries regarding the issuance of a Certificate of Correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

The Certificate of Correction Branch will be notified of this decision granting the request under 37 CFR 3.81(b) and directing issuance of the requested Certificate of Correction.

Office of Petitions

Doc Code: PET.AUTO **Document Description: Petition automatically granted by EFS-Web**	PTO/SB/141 U.S. Patent and Trademark Office Department of Commerce

Electronic Petition Request	**Petition to Correct Assignee After Payment of Issue Fee (37 CFR 3.81(b))**
Application Number	11543812
Filing Date	06-Oct-2006
First Named Inventor	Katsuya Sakayori
Attorney Docket Number	123771.01
Title of Invention	WET ETCHABLE LAMINATED BODY, INSULATION FILM, AND ELECTRONIC CIRCUIT PART USING THE LAMINATED BODY AND THE FILM

Pursuant to 37 CFR 3.81(b), applicant hereby request that the listed assignee with respect to U.S. Patent Number 8066891 be corrected to accurately reflect the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

☒ I certify, in accordance with 37 CFR 1.4(d)(4), that the assignment was submitted for recordation as set forth in 37 CFR 3.11 before issuance of the patent.

Correction of Assignee

Current Assignment Listed (240 char limit)
The assignment information is currently listed as:

Dai Nippon Printing Co., Ltd., Tokyo (JP)

Update Assignment Listing to (240 char limit)

Change assignment information to the following:

Dai Nippon Printing Co., Ltd., Tokyo (JP); Nippon Steel Chemical Co., Ltd., Tokyo (JP)

☒ As required by 37 CFR 3.81, a Request for a Certificate of Correction is being filed herewith, along with the fee set forth in 37 CFR 1.20(a).

◯ Applicant(s) status remains as OTHER THAN small entity. ◯ Applicant claims SMALL ENTITY status. See 37 CFR 1.27. ◯ Applicant(s) status remains as SMALL ENTITY. ◉ Applicant is no longer claiming small entity status. See 37 CFR 1.27(g)(2). I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.
THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES I certify, in accordance with 37 CFR 1.4(d)(4) that I am: ◯ An attorney or agent registered to practice before the Patent and Trademark Office who has been given power of attorney in this application. ◉ An attorney or agent registered to practice before the Patent and Trademark Office, acting in a representative capacity. ◯ A sole inventor ◯ A joint inventor; I certify that I am authorized to sign this submission on behalf of all of the inventors ◯ A joint inventor; all of whom are signing this request ◯ The assignee of record of the entire interest that has properly made itself of record pursuant to 37 CFR 3.71

Signature	/Matthew C. Barthalow/
Name	Matthew C. Barthalow
Registration Number, if applicable	60323

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

BACON & THOMAS, PLLC
625 SLATERS LANE
FOURTH FLOOR
ALEXANDRIA VA 22314-1176

DEC 07 2011

In re Application of :
MOSER, THIERRY et al. :
Application No. 11/543,920 : **DECISION ON PETITION**
Filed: October 6, 2006 :
Attorney Docket No.: MOSE3001D/FJD :

This is a decision on the Petition To Withdraw Holding Of Abandonment Based On Failure To Receive Office Action, received in the United States Patent and Trademark Office (USPTO) on October 24, 2011.

The petition is **DISMISSED**.

The application was held abandoned for failure to timely file a proper reply to the Office letter — Notice to File Corrected Application Papers — mailed on September 17, 2010, which set a two-month time period to reply (not extendable). New Notice to File Corrected Application Papers includes the statement, "or the time remaining from the Notice of Allowance and Fee(s) Due, whichever is longer, within which to respond." Accordingly, the Notice of Abandonment was mailed on December 7, 2010.

In absence of any irregularity in the mailing of the Notice, there is a strong presumption that the Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office action must include a statement from the practitioner stating that the practitioner did not receive the Office action, and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Action Are Not Received" MPEP 711.03(c) II

Petitioner has not met the above-stated conditions.

The holding of abandonment cannot be withdrawn as this time.

Although this petition for withdrawal of the holding of abandonment is being dismissed, other petition remedies are available for bringing about the withdrawal of the holding of abandonment.
File a petition for Revival of Abandoned Application under CFR §1.137 (a) or (b). Forms are available at USPTO website http://www.uspto.gov

- Under 37 CFR 1.13(a), a petition for the revival of an ***unavoidable*** abandoned
- Under 37 CFR 1.137(b), a petition for the revival of an ***unintentionally***

Further correspondence with respect to the petition for revival under 37 CFR 1.137 should be directed to the Office Of Petition at 703-305-9282 or addressed as follows:

By mail:	Commissioner for Patents P O Box 1450 Mail Stop Petitions Alexandria, VA 22313-1450
By FAX:	(571) 273-8300 Attn: Office of Petitions
By hand:	Customer Service Window Randolph Building 401 Dulany Street Alexandria, VA 22314

Telephone inquiries concerning this matter should be directed to the undersigned at (703) 756-1547.

Kay D. Pinkney
Application Assistance Unit
Office of Data Management

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MAILED

JUL 18 2011

OFFICE OF PETITIONS

JON M DICKINSON PC
8015 SE 31ST AVE
PORTLAND OR 97202

In re Application of :
Ohnstad, et al. :
Application No. 11/543,960 : ON PETITION
Filed: March 24, 2006 :
Attorney Docket No. MAIT-038XX :

This is a decision on the petition to revive under 37 CFR 1.137(a), filed June 25, 2011, which is being treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment.

The petition under 37 CFR 1.181 is **GRANTED**.

The holding of abandonment is **WITHDRAWN**.

This application became abandoned by operation of law for failure to timely filed a reply to the non-final Office action mailed September 4, 2009. This Office action set a shortened statutory period for reply of three months. No reply having been received, the application became abandoned on December 5, 2009. The Office mailed a Notice of Abandonment on March 24, 2010.

Petitioner contends that he did timely file a reply on November 10, 2009. A review of the reply reveals that it was directed to application No. 10/543,960.

As set forth in the Manual of Patent Examining Procedure § 724.05:

> Where the Office can determine the correct application file that the papers were actually intended for, based on identifying information in the heading of the papers (e.g. application number, filing date, title of invention and inventor(s) name(s)), the Office will transfer the papers to the correct application file for which they were intended without the need of a petition.

Here, apart from the application number, the response did contain the correct identifying information (specifically the inventor's name, attorney docket number, the title of the invention, the filing date, and the Examiner's name). Accordingly, it is concluded that the Office could have determined the correct application file for which the response was intended.

In view thereof, the holding of abandonment is withdrawn.

Given the basis for granting this petition, the $270 petition fee will be refunded to petitioner.

The reply filed on November 10, 2009 has been removed from application No. 10/543,960 and placed into the instant application.

The matter is being forwarded to Group Art Unit 3612 for consideration of the Amendment filed November 10, 2009.

Telephone inquiries regarding this decision should be directed to the undersigned at (571)272-3207.

Cliff Congo
Petitions Attorney
Office of Petitions

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.
1100 NEW YORK AVENUE, N.W.
WASHINGTON DC 20005

MAILED
SEP 28 2011
OFFICE OF PETITIONS

In re Application of	:	
YOSHITAKE et al.	:	
Application No. 11/543,991	:	DECISION ON PETITIONS
Filed: October 6, 2006	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No.: 1089.0670001/MAC	:	AND 37 CFR 1.55(c)

This is a decision on the petitions under 37 CFR 1.78(a)(3), filed June 24, 2011, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 365(c) for the benefit of priority to prior-filed U. S. Application No. 10/594,436, filed March 23, 2005. This correspondence is also being treated as a petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim under 35 U.S.C. § 119(a)-(d) for the benefit of a prior-filed foreign application, as set forth in the declaration filed September 10, 2007.

As to the benefit claim under 37 CFR 1.78(a)(3):

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000 and after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed 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 37 CFR 1.78(a)(2)(ii) 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.

All of the requirements being met, the petition to accept an unintentionally delayed claim for priority under 35 U.S.C. §§ 120 and 365(c) is **GRANTED.**

As to the benefit claim under 37 CFR 1.55(c):

A petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim for priority requires:

(1) The nonprovisional application claiming the benefit of an earlier filing date must be filed on or after November 29, 2000;
(2) the claim submitted with the petition must identify the prior foreign application for which priority is claimed, as well as any foreign application for the same subject matter and having a filing date before that of the application for which priority is claimed, by the application number, country, and the filing date, and be included either in an oath or declaration (37 CFR 1.63(c)(2)) or in an Application Data Sheet (37 CFR 1.76(b)(6);
(3) the surcharge as set forth in 37 CFR 1.17(t);
(4) a statement that the entire delay between the date the claim was due under 37 CFR 1.55(a)(1) 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); and
(5) the above-identified nonprovisional application must be filed within 12 months of the filing date of the foreign application.

All of the requirements being met, the petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim for benefit of priority under 35 U.S.C. § 119(a)-(d) to the prior-filed foreign application is **GRANTED**.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR 1.78(a)(3) and 37 CFR 1.55(c) should not be construed as meaning that this application is entitled to the benefit of the prior-filed applications. In order for this application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. §§ 120 and 365(c) and 37 CFR 1.78(a)(1) and (a)(2) and 35 § U.S.C. 119(a)-(d) and 37 CFR 1.55(a)(1) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether this application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed applications, accompanies this decision on petition.

Any inquiries concerning this decision may be directed to Jose' G Dees at (571) 272-1569. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This application is being to referred Technology Center Art Unit 1611 for consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. §§ 120, 365(c) and 35 U.S.C. § 119(a)-(d) to the prior-filed applications.

Bryan Lin
PCT Legal Examiner
Office of PCT Legal Administration

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
11/543,991	10/06/2006	1611	2710	1089.0670001/MAC	49	3

CONFIRMATION NO. 6573

CORRECTED FILING RECEIPT

26111
STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.
1100 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005

Date Mailed: 08/31/2011

Receipt is acknowledged of this non-provisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections**

Applicant(s)

Takashi Yoshitake, Gifu, JAPAN;
Mitsuru Mizuno, Gifu, JAPAN;
Kenji Moroshima, Gifu, JAPAN;
Shigeru Aoki, Gifu, JAPAN;

Assignment For Published Patent Application

EISAI R&D MANAGEMENT CO., LTD., Tokyo, JAPAN

Power of Attorney: The patent practitioners associated with Customer Number 26111

Domestic Priority data as claimed by applicant

This application is a CIP of 10/594,436 09/26/2006
which is a 371 of PCT/JP05/05217 03/23/2005

Foreign Applications (You may be eligible to benefit from the **Patent Prosecution Highway** program at the USPTO. Please see http://www.uspto.gov for more information.)
JAPAN 2004-093506 03/26/2004

If Required, Foreign Filing License Granted: 02/06/2007

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/543,991**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

METHOD FOR CONTROLLED RELEASE OF AN ACID-UNSTABLE PHYSIOLOGICALLY ACTIVE SUBSTANCE

Preliminary Class

424

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at http://www.uspto.gov/web/offices/pac/doc/general/index.html.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, http://www.stopfakes.gov. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where

the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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FISH & RICHARDSON P.C.
PO BOX 1022
MINNEAPOLIS MN 55440-1022

MAILED
SEP 22 2011
OFFICE OF PETITIONS

In re Patent No. 7,979,785 :
Wang et al. :
Issue Date: July 12, 2011 :
Application No. 11/544,005 : DECISION ON REQUEST FOR
Filed: October 4, 2006 : RECONSIDERATION OF
Attorney Docket No. 16113-0233001 : PATENT TERM ADJUSTMENT
Title: RECOGNIZING TABLE OF CONTENTS IN AN IMAGE SEQUENCE :

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(d)" filed on September 12, 2011 requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one hundred forty (140) days.

The request for reconsideration of the patent term adjustment (PTA) pursuant to 37 CFR 1.705(d) is **DISMISSED**.

Patentees dispute the 59 and 89 day reductions under 37 CFR 1.704(b) for applicants taking in excess of three months in filing a responses. Patentees state that there was no delay because the three month reply period fell on the weekend. Thus, the reductions should be 57 and 87 days.

Patentees' argument is untimely. Issues that should have been raised on application for patent term adjustment under 37 CFR 1.705(b) are untimely if first raised on request for reconsideration under 37 CFR 1.705(d). Issues under 37 CFR 1.705(d) are those tied to the revised determination calculated after the mailing of the notice of allowance. As such challenges to calculations determined prior to the notice of allowance (and reflected in the determination sent with the notice of allowance) are untimely when first presented under

1.705(d). Thus, Patentees' request for reconsideration of said 59 and 89 day reductions are dismissed as untimely.

Patentees also contest the period of adjustment of 0 days accorded pursuant to 37 CFR 1.702(b) and assert that the correct period of adjustment under 37 CFR 1.702(b) is 134 days.

Petitioner's arguments have been carefully considered, but are not persuasive. The period of adjustment pursuant to 37 CFR 1.702(b) was properly calculated at 0 days.

35 USC 154(b)(1)(B) states in relevant part:

Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including – (i) any time consumed by continued examination of the application requested by the applicant under section 132(b).

37 CFR 1.702(b) states in relevant part:

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including: (1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b).

37 CFR 1.703(b) states in relevant part:

The period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the sum of the following periods: (1) The number of days, if any, in the period beginning on the date on which a request for continued

examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

Counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentee does not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is time consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56365, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

Patentee's argument that the period of time after the issuance of a notice of allowance on a request for continued examination is not "any time consumed by continued examination requested by the applicant under section 132(b)" within the meaning of 35 U.S.C. 154(b)(1)(B)(i) is not availing. This limitation is not supported by the statutory language. Garcia v. United States, 469 U.S. 70, 75 (1984) ("only the most extraordinary showing of contrary intentions from [legislative history] would justify a limitation on the 'plain meaning' of the statutory language"). BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning"). The statute provides for a guarantee of no more than 3-year application pendency, by providing for an adjustment in the patent term:

First, "Subject to the limitations of paragraph (2)," means that the limitations of paragraph 2 apply to this paragraph's

adjustment of patent term. That is, the day-to-day extension of patent term for pendency beyond the 3 year period is restricted as follows: 1) "B delay" cannot accrue for days of "A delay" that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

Second, "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of the United States) after the application filing date before an adjustment will accrue for "B delay."

Third, "not including- (i) any time consumed by continued examination of the application requested by the applicant under section 132(b); (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), meaning that the three-year period does not include "any time consumed by" or "any delay in processing," as specified in clauses (i)-(iii). This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, No. 07-1492, 2008 U.S. Dist. LEXIS 76063 (D.D.C., September 30, 2008), because the

clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate this First, "Subject to the limitations of paragraph (2)," means that the limitations of paragraph 2 apply to this paragraph's adjustment of patent term. That is, the day-to-day extension of patent term for pendency beyond the 3 year period is restricted as follows: 1) "B delay" cannot accrue for days of "A delay" that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

Thus, not including "any time consumed by" means not including any days used to prosecute the application as specified in clauses (i)-(ii)[1]. Clause (i) specifies "any time consumed by continued examination of the application requested by the applicant under section 132(b)." Clause (ii) specifies "any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court." "Time" in the context of this legislation throughout refers to days. "Consumed by" means used by or used in the course of. *Websters Collegiate Dictionary*, (11th ed.). The "any" signifies that the days consumed by are "any" of the days in the pendency of the application, and not just days that occur after the application has been pending for 3 years. As such, "any time consumed by" refers to any days used in the course of 1) continued examination of the application under section 132(b)(the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, and 4) appellate review. Thus, that 3-year period given to the Office to issue a patent before an adjustment will accrue for "B delay" does not include any days used in the course of or any time consumed by clauses (i)-

[1] Clause (iii) provides for not including (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued. It is noted that paragraph (3)(C) allows with an adequate showing by applicant for reinstatement of no more than 3 months of the patent term reduced for applicant delay in taking in excess of three months to respond.

(ii), including any time consumed by the filing of a request for continued examination.

Fourth, "the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued" meaning that the consequence of this failure is that after "the end of that 3-year period" an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.
effect, the statute, *inter alia*, grants adjustments of patent term whenever the patent prosecution takes more than three years, regardless of the reason. The time consumed by prosecution of the application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. The time it takes to prosecute the application ends not with the mailing of the notice of allowance, but with the issuance of the patent.

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the law. See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears

that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written

notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in Blacklight Power, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. See BlackLight Power, Inc. v. Rogan, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously been issued for the application. See In re Drawbaugh, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long

as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn

from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures[2] permit the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See 37 CFR 1.114(a)(1).

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the notice of allowance. All the time the application is pending from the date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that request. Applicant has gotten further prosecution of the application without having to file a continuing application under 37 CFR 1.53(b).

All of the continued examination pursuant to the filing of the request by the applicant is properly excluded from the delay attributed to the Office. 35 U.S.C. 154(b)(1)(B)'s guarantee of a total application pendency of no more than three years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

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[2] Thus, on occasion, even where a request for continued examination has already been filed and a notice of allowance issued pursuant to that request, applicant may file a further request for continued examination.

Application No. 11/544,005 Patent 7,979,785

In view thereof, no adjustment to the patent term will be made.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3215.

Charlema Grant
Attorney Advisor
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Paper No.

Robert D. Buyan, Stout, Uxa,
Buyan & Mullins,
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Suite 300
Irvine CA 92618

MAILED

OCT 27 2011

OFFICE OF PETITIONS

In re Patent No. 7,419,497 :
Muni et al. :
Issue Date: September 2, 2008 :
Application No. 11/544,009 : NOTICE REGARDING DEFICIENCY
Filed: October 4, 2006 :
Atty Docket No. ACLRT-061B :

This is a notice regarding your letter received October 19, 2011, notifying the Office of loss of entitlement to small entity status and requesting acceptance of a fee deficiency submission as provided for in 37 CFR 1.28.

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

The instant request included an itemization and payment of $640 for the deficiency in payment of the first maintenance fee.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

Payment of the deficiency has been treated under § 1.27(g)(2) as a notification of a loss of entitlement to small entity status.

Telephone inquiries related to this decision should be directed to the undersigned at 571-272-6219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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901 NEW YORK AVENUE, NW
WASHINGTON DC 20001-4413

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APR 25 2011

OFFICE OF PETITIONS

In re Application of :
Kenichiro Nagasaka :
Application No. 11/544,052 : DECISION ON REQUEST FOR REFUND
Filed: October 6, 2006 :
Attorney Docket No. 09812.0836 :

This is a decision on the Request For Refund filed August 20, 2010 and resubmitted on March 11, 2011.

The request is **DISMISSED**.

Applicant filed the above request for refund and stated that "On August 12, 2010, the Examiner called the attorneys of record asking about the status of this application. The Examiner said that a Restriction Requirement was mailed on March 1, 2010. However, due to the failure of the U.S. Postal Services, the Restriction Requirement was never delivered to the undersigned. The undersigned has no record of receipt of the Restriction Requirement. ...

Because the Restriction Requirement was never received by the undersigned due to the failure of the U.S. Postal Services, Applicant has to pay an extension of time fee in excess of what would have been required if Applicant had received the Restriction Requirement. Therefore, the undersigned respectfully requests a full refund of the five-month extension fee of $2,350.00."

Applicant's attention is directed to MPEP 607.02 which states:

When an applicant or patentee takes an action "by mistake" (e.g., files an application or maintains a patent in force "by mistake"), the submission of fees required to take that action (e.g., a filing fee submitted with such application or a maintenance fee submitted for such patent) is **not** a "fee paid by mistake" within the meaning of 35 U.S.C. 42(d).

37 CFR 1.26(a) also provides that a change of purpose after the payment of a fee, as when a party desires to withdraw the filing of a patent application for which the fee was paid, will not entitle the party to a refund of such fee.

The request for the five-month extension of time fee submitted on August 20, 2010, was necessary to keep the application in pending status. This is not a matter where an application went abandoned because of nonreceipt of an Office action, and a petition to withdraw holding of abandonment under 37 CFR 1.181(no fee) was filed. It was applicant's decision to file the request for the five-month extension of time on August 20, 2010.

In view of the above, the request for refund is dismissed.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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K&L Gates LLP
STATE STREET FINANCIAL CENTER
One Lincoln Street
BOSTON MA 02111-2950

MAILED

NOV 22 2010

OFFICE OF PETITIONS

In re Application of :
Boskamp, et al. :
Application No. 11/544,067 : NOTICE
Filed: October 6, 2006 :
Attorney Docket No. GPB-002 :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989).** Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

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JAMES F. BAIRD, ESQ.
PO BOX 574
WEST BROOKFIELD MA 01585-0574

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JAN 05 2011

OFFICE OF PETITIONS

In re Application of	:	
Gary M. Cananzey	:	
Application Number: 11/544098	:	DECISION ON PETITION
Filing or 371(c) Date: 10/06/2006	:	
Attorney Docket Number: UTL 06-037	:	

This is a decision on the petition filed on October 27, 2010, under 37 CFR 1.137(b), to revive the above-identified application.

The petition is GRANTED.

This application became abandoned on September 11, 2010, for failure to properly respond to the final Office action mailed on March 10, 2010, which set a three (3)-month shortened statutory period for reply. On September 10, 2010, an amendment after final rejection was filed, accompanied by a three (3) month extension of time. However, on November 9, 2010, a Notice of Abandonment was mailed, stating that the reply received on September 10, 2010, did not constitute a proper reply, or a *bona fide* attempt at a proper reply, to the final rejection.

The subject petition was filed on October 27, 2010, accompanied by the petition fee.

Petitioner has submitted a Request for Continued Examination (RCE) which states that the previously submitted reply is the submission required under 37 CFR 1.114.

The application file is being referred to Technology Center Director AU 3725 for appropriate action on the concurrently filed Request for Continued Examination.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

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MORRISON & FOERSTER LLP
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DEC 07 2010

OFFICE OF PETITIONS

In re Application of
D. Bruce Modesitt
Application No. 11/544,149
Filed: October 6, 2006
Attorney Docket No. 602572000105

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed October 14, 2010.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others.

The request was signed by Mika Mayer on behalf of all attorneys of record who are associated with customer No. 25226. All attorneys/agents associated with the Customer Number 25226 have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

The correspondence address of record has been changed and the new correspondence address is the address indicated below.

There is an outstanding Office action mailed June 24, 2010 that requires a reply from the applicant.

Telephone inquiries concerning this decision should be directed to undersigned at 571-272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

cc: ARSTASIS, INC.
1021 HOWARD AVENUE
SUITE C
SAN CARLOS, CA 94070

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/544,149	10/06/2006	D. Bruce Modesitt	602572000105

CONFIRMATION NO. 7973

POWER OF ATTORNEY NOTICE

25226
MORRISON & FOERSTER LLP
755 PAGE MILL RD
PALO ALTO, CA 94304-1018

OC000000044789636

Date Mailed: 12/03/2010

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 10/14/2010.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

/amwise/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

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PATENT GROUP
C/O DLA PIPER US LLP
203 N. LASALLE ST., SUITE 1900
CHICAGO IL 60601

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DEC 2 1 2010

OFFICE OF PETITIONS

In re Application of	:	
Dunn et al.	:	
Application No. 11/544,157	:	DECISION ON PETITION
Filed: October 6, 2006	:	
Attorney Docket No. DMS-06-5495DIV1-CON	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 1, 2010, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before October 13, 2010, as required by the Notice of Allowance and Fee(s) Due mailed July 13, 2010. Accordingly, the date of abandonment of this application is October 14, 2010. A Notice of Abandonment was mailed October 27, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $755.00 and the publication fee of $300.00, (2) the petition fee of $810.00; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

This application is being referred to the Office of Data Management for processing into a patent.

Joan Olszewski
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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DEC 07 2010

OFFICE OF PETITIONS

In re Application of
D. Bruce Modesitt
Application No. 11/544,177
Filed: October 6, 2006
Attorney Docket No. 602572000104

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed October 14, 2010.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others.

The request was signed by Mika Mayer on behalf of all attorneys of record who are associated with customer No. 25226. All attorneys/agents associated with the Customer Number 25226 have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

The correspondence address of record has been changed and the new correspondence address is the address indicated below.

There is an outstanding Office action mailed June 22, 2010 that requires a reply from the applicant.

Telephone inquiries concerning this decision should be directed to undersigned at 571-272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

cc: ARSTASIS, INC.
1021 HOWARD AVENUE
SUITE C
SAN CARLOS, CA 94070

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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/544,177	10/06/2006	D. Bruce Modesitt	602572000104

CONFIRMATION NO. 8079

POWER OF ATTORNEY NOTICE

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OC000000044789603

Date Mailed: 12/03/2010

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 10/14/2010.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

/amwise/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

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DEC 15 2010

OFFICE OF PETITIONS

In re Application of
D. Bruce Modesitt
Application No. 11/544,196
Filed: October 6, 2006
Attorney Docket No. 602572000101

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed October 14, 2010.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others.

The request was signed by Mika Mayer on behalf of all attorneys of record who are associated with customer No. 25226. All attorneys/agents associated with the Customer Number 25226 have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

The correspondence address of record has been changed and the new correspondence address is the address indicated below.

There is an outstanding Office action mailed June 23, 2010 that requires a reply from the applicant.

Telephone inquiries concerning this decision should be directed to undersigned at 571-272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

cc: ARSTASIS, INC.
1021 HOWARD AVENUE
SUITE C
SAN CARLOS, CA 94070

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/544,196	10/06/2006	D. Bruce Modesitt	602572000101

CONFIRMATION NO. 8067

POWER OF ATTORNEY NOTICE

25226
MORRISON & FOERSTER LLP
755 PAGE MILL RD
PALO ALTO, CA 94304-1018

OC000000044861072

Date Mailed: 12/08/2010

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 10/14/2010.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

/amwise/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

DLA PIPER LLP US
1999 AVENUE OF THE STARS
SUITE 400
LOS ANGELES CA 90067

MAILED

JAN 04 2011

OFFICE OF PETITIONS

In re application of :
Osamu Kakutani et al :
Application No. 11/544,231 : NOTICE
Filed: October 6, 2006 :
Attorney Docket No. 85A 3895 :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 on August 30, 2010.

The Office no longer investigates or rejects original or reissue patent under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

There is no indication that the person signing the request was ever given a power of attorney to prosecute the application. If the person signing the request desires to receive future correspondence regarding this patent, the appropriate power of attorney documents must be submitted. While a courtesy copy of this decision is being mailed to the person signing the request, all future correspondence will be directed to the address currently of record until appropriate instructions are received.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

Cc:

QUINN EMANUEL URQUHART & SULLIVAN, LLP
KODA/ANDROLIA
865 S. FIGUEROA STREET, 10TH FLOOR
LOS ANGELES, CALIFORNIA 90017

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Mr. Christopher John Rourk
Jackson Walker LLP
901 Main Street, Suite 6000
DALLAS TX 75202

MAILED
SEP 09 2011
OFFICE OF PETITIONS

In re Application of :
Alexander G. Sensenbrenner, et al. :
Application No. 11/544,250 : DECISION ON PETITION
Filed: October 6, 2006 : TO MAKE SPECIAL UNDER
Attorney Docket No. 014195.00002 : 37 CFR 1.102(c)(1)
:

This is a decision on the petition under 37 CFR 1.102(c)(1), filed August 26, 2011, to make the above-identified application special based on applicant's age as set forth in M.P.E.P. § 708.02, Section IV.

The petition is **GRANTED**.

A grantable petition to make an application special under 37 CFR 1.102(c)(1) and MPEP § 708.02, Section IV: Applicant's Age must be accompanied by evidence showing that at least one of the applicants is 65 years of age, or more, such as a birth certificate or a statement by applicant. No fee is required

The instant petition includes a statement from the attorney of record declaring that he/she is in possession of such evidence that shows the inventor, Dale H Rice is 65 years of age or older. Accordingly, the above-identified application has been accorded "special" status.

Telephone inquiries concerning this decision should be directed to Terri Johnson at 571-272-2991.

All other inquiries concerning either the examination or status of the application should be directed to the Technology Center.

The application is being forwarded to the Technology Center Art Unit 3739 for action on the merits commensurate with this decision.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

HEWLETT-PACKARD COMPANY
INTELLECTUAL PROPERTY ADMINISTRATION
3404 E. HARMONY ROAD
MAIL STOP 35
FORT COLLINS CO 80528

MAILED
SEP 22 2011
OFFICE OF PETITIONS

In re Patent No. 7,925,666	:	
Issue Date: April 12, 2011	:	
Application No. 11/544,251	:	NOTICE UNDER 37 CFR. 1.28(c)
Filed: October 06, 2006	:	
Attorney Docket No. **200704472-1**	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28.

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

Inquiries related to this communication should be directed to the Michelle R. Eason at (571) 272-4231.

Thurman Page
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Decision Date : April 5,2011

In re Application of :

Hamid Bahadori

Application No : 11544300

Filed : 06-Oct-2006

Attorney Docket No : 020899-001900US

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY/AGENTOF RECORD

This is an electronic decision on the Request to Withdraw as attorney or agent of record under 37 CFR§ 1.36(b), filed April 5,2011

The request is **APPROVED**

The request was signed by Paul C. Haughey (registration no. 31836) on behalf of all attorneys/agents associated with Customer Number 20350 . All attorneys/agents associated with Customer Number 20350 have been withdrawn.

Since there are no remaining attorneys of record, all future communications from the Office will be directed to the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71, with Customer number 25259 .

As a reminder, requester is required to inform the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71 of the electronically processed petition.

Telephone inquiries concerning this decision should be directed to the Patent Electronic Business Center (EBC) at 866-217-9197.

Office of Petitions

Doc Code: PET.AUTO **Document Description: Petition automatically granted by EFS-Web**	PTO/SB/83 U.S. Patent and Trademark Office Department of Commerce

Electronic Petition Request	**REQUEST FOR WITHDRAWAL AS ATTORNEY OR AGENT AND CHANGE OF CORRESPONDENCE ADDRESS**
Application Number	11544300
Filing Date	06-Oct-2006
First Named Inventor	Hamid Bahadori
Art Unit	2451
Examiner Name	MADHU WOOLCOCK
Attorney Docket Number	020899-001900US
Title	Session based web usage reporter

◉ Please withdraw me as attorney or agent for the above identified patent application and the practitioners of record associated with Customer Number: 20350

The reason(s) for this request are those described in 37 CFR:

10.40(b)(2)

Certifications

☒ I/We have given reasonable notice to the client, prior to the expiration of the response period, that the practitioner(s) intend to withdraw from employment

☒ I/We have delivered to the client or a duly authorized representative of the client all papers and property (including funds) to which the client is entitled

☒ I/We have notified the client of any responses that may be due and the time frame within which the client must respond

Change the correspondence address and direct all future correspondence to:
The address of the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71, associated with Customer Number: 25259

I am authorized to sign on behalf of myself and all withdrawing practitioners.

Signature	/Paul C. Haughey/
Name	Paul C. Haughey
Registration Number	31836

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

THE SMALL PATENT LAW GROUP LLP
225 S. MERAMEC, STE. 725T
ST. LOUIS MO 63105

MAILED

NOV 03 2010

OFFICE OF PETITIONS

In re Application of	:
Moon et al.	: DECISION ON PETITION
Application No. 11/544,309	: UNDER 37 CFR 1.78(a)(3)
Filed: October 6, 2006	: AND 37 CFR 1.78(a)(6)
Attorney Docket No. IP-0241-US (830-241US)	:

This is a decision on the renewed petition under 37 CFR 1.78(a)(3) and 1.78(a)(6), filed August 3, 2010, to accept an unintentionally delayed claim under 35 U.S.C. § 120 and 119(e) for the benefit of the prior-filed applications set forth in the amendment filed March 22, 2010.

The petitions are **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

> **(1)** the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed 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 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional where there is a question whether the delay was unintentional.

The instant nonprovisional application was filed on October 6, 2006 and was pending at the time of filing of the instant petition. A reference to the prior-filed applications has been included in an amendment to the first sentence of the specification following the title, as required by 37 CFR §§ 1.78(a)(2)(iii) and 1.78(a)(5)(iii).

The instant nonprovisional application was filed after November 29, 2000, and the claim for priority herein is submitted after expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). *See* 35 U.S.C. § 120 and § 119(e). Accordingly, having found that the instant petition satisfies the conditions of 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) for acceptance of an unintentionally delayed claim for priority under 35 U.S.C. § 120 and § 119(e), the petition to accept an unintentionally delayed claim of benefit to the prior-filed applications is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) should not be construed as meaning that the instant application is entitled to the benefit of the filing date of the prior-filed applications. In order for the instant application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. §120 and 1.78(a)(1) and (a)(2) and under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed applications, accompanies this decision on petition.

Any questions concerning this matter may be directed to Joan Olszewski at (571) 272-3206.

This matter is being referred to Technology Center Art Unit 1772 for appropriate action on the Amendment submitted March 22, 2010, including consideration by the examiner of the claim under 35 U.S.C. § 120 and 37 CFR 1.78(a)(2) for the benefit of the prior-filed nonprovisional applications, and for consideration of the claim under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(5) for the benefit of the prior-filed provisional applications.

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

cc: **ATTACHMENT**: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
11/544,309	10/06/2006	1772	1730	IP-0241-US (830-241US)	32	1

CONFIRMATION NO. 6906

38790
THE SMALL PATENT LAW GROUP LLP
225 S. MERAMEC, STE. 725T
ST. LOUIS, MO 63105

CORRECTED FILING RECEIPT

Date Mailed: 11/02/2010

Receipt is acknowledged of this non-provisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections**

Applicant(s)

John A. Moon, Wallingford, CT;
Martin A. Putnam, Cheshire, CT;

Assignment For Published Patent Application

CyVera Corporation

Power of Attorney: The patent practitioners associated with Customer Number 38790

Domestic Priority data as claimed by applicant

This application is a CIP of 10/661,031 09/12/2003 PAT 7,349,158
which is a CIP of 10/645,686 08/20/2003 ABN
which claims benefit of 60/410,541 09/12/2002
and said 10/661,031 09/12/2003
claims benefit of 60/410,541 09/12/2002
and said 10/645,686 08/20/2003
claims benefit of 60/405,087 08/20/2002
This application 11/544,309
is a CIP of 10/661,082 09/12/2003 PAT 7,126,755
which claims benefit of 60/410,541 09/12/2002
and is a CIP of 10/645,686 08/20/2003 ABN
and is a CIP of 10/645,689 08/20/2003 ABN
which claims benefit of 60/410,541 09/12/2002
and claims benefit of 60/405,087 08/20/2002
This application 11/544,309
is a CIP of 10/661,254 09/12/2003 PAT 7,190,522
which claims benefit of 60/410,541 09/12/2002
and is a CIP of 10/645,686 08/20/2003 ABN

and is a CIP of 10/645,689 08/20/2003 ABN
This application 11/544,309
is a CIP of 10/763,995 01/22/2004 PAT 7,164,533
which claims benefit of 60/441,678 01/22/2003
and claims benefit of 60/519,932 11/14/2003
and is a CIP of 10/661,234 09/12/2003 PAT 7,106,513
which is a CIP of 10/645,689 08/20/2003 ABN
and claims benefit of 60/410,541 09/12/2002
and said 10/763,995 01/22/2004
is a CIP of 10/661,031 09/12/2003 PAT 7,349,158
and is a CIP of 10/661,836 09/12/2003 PAT 7,399,643
which is a CIP of 10/645,689 08/20/2003 ABN
and claims benefit of 60/410,541 09/12/2002

Foreign Applications

If Required, Foreign Filing License Granted: 11/01/2010

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/544,309**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Method of reading encoded particles

Preliminary Class

436

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application

serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at http://www.uspto.gov/web/offices/pac/doc/general/index.html.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, http://www.stopfakes.gov. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, VA 22313-1450
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MAILED

DEC 07 2010

OFFICE OF PETITIONS

MORRISON & FOERSTER LLP
755 PAGE MILL RD
PALO ALTO, CA 94304-1018

In re Application of
Bruce D. Modesitt
Application No. 11/544,317
Filed: October 6, 2006
Attorney Docket No. 602572000301

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed October 14, 2010.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others.

The request was signed by Mika Mayer on behalf of all attorneys of record who are associated with customer No. 25226. All attorneys/agents associated with the Customer Number 25226 have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

The correspondence address of record has been changed and the new correspondence address is the address indicated below.

There is an outstanding Office action mailed June 24, 2010 that requires a reply from the applicant.

Telephone inquiries concerning this decision should be directed to undersigned at 571-272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

cc: ARSTASIS, INC.
1021 HOWARD AVENUE
SUITE C
SAN CARLOS, CA 94070

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/544,317	10/06/2006	D. Bruce Modesitt	602572000301

CONFIRMATION NO. 8478

POWER OF ATTORNEY NOTICE

25226
MORRISON & FOERSTER LLP
755 PAGE MILL RD
PALO ALTO, CA 94304-1018

OC000000044831114

Date Mailed: 12/07/2010

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 10/14/2010.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

/amwise/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 10/21/11

TO SPE OF : ART UNIT 1762

SUBJECT : Request for Certificate of Correction for Appl. No.: 11544320 Patent No.: 7799860

CofC mailroom date: 10/03/11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580
You can fax the Directors/SPE response to 571-273-3421

Note: Should the Foreign Patent Documents be added?

Lamonte Nicholas

Certificates of Correction Branch

571-272-3421

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

☒	**Approved**	**All** changes apply.
☐	**Approved in Part**	Specify below which changes **do not** apply.
☐	**Denied**	State the reasons for denial below.

Comments: _____

_____

_____

_____

_____

_____ 1762

SPE **Art Unit**

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 11/20/11

TO SPE OF : ART UNIT 1762

SUBJECT : Request for Certificate of Correction for Appl. No.: 11544320 Patent No.: 7799860

CofC mailroom date: 11/10/11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580
You can fax the Directors/SPE response to 571-273-3421

Note: **Should the changes be made?**

Yes, the COCIN may be entered. /RH/

Lamonte Newsome

Certificates of Correction Branch

571-272-3421

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

☒ **Approved** — **All** changes apply.

☐ **Approved in Part** — Specify below which changes **do not** apply.

☐ **Denied** — State the reasons for denial below.

Comments: _____

_____

_____

_____

_____

_____ 1762

SPE **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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www.uspto.gov

ECKERT SEAMANS CHERIN & MELLOTT
600 GRANT STREET
44TH FLOOR
PITTSBURGH PA 15219

MAILED

JAN 03 2012

OFFICE OF PETITIONS

In re Patent No. 7,799,860 :
Sugishita et al. :
Issue Date: September 21, 2010 :
Application No. 11/544,320 : DECISION ON REQUEST FOR
Filed: October 6, 2006 : CERTIFICATE OF CORRECTION
Attorney Docket No. 290390-00003 :

This is in response to the REQUEST FOR CERTIFICATE OF CORRECTION filed November 10, 2011, requesting that the front page of the patent be corrected to show the Foreign Application Priority Data.

A review of the record confirms that the foreign priority claims at issue were made in the declaration for patent filed with the application. The claims identified the prior foreign applications by specifying their application number, country (or intellectual property authority), and the day, month, and year of their filing. Further as noted by patentee, the claims were both present on the first Official filing receipt and the application as published on March 22, 2007 included the foreign priority claims.

Moreover, the certified copies of the foreign applications were filed in parent application No. 10/433,515.

Thus, it is concluded that the foreign priority claims were timely and no petition under 37 CFR 1.55(c) is required.

However, a review of the record shows that the specification was not amended during the prosecution of the application to include the foreign priority claims. The certificate of correction includes that specific reference to the foreign applications in the specification. Thus, a request for certificate of

correction and payment of the certificate of correction fee is required and is acknowledged.

The request for certificate of correction is GRANTED.

Any questions concerning this decision on petition may be directed to the undersigned at (571) 272-3219.

The Certificates of Correction Branch has been notified of this decision granting the request for certificate of correction filed November 10, 2011.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

MAILED

OCT 22 2010

OFFICE OF PETITIONS

In re Application of
Stacy A. LEAVITT, et al
Application No. 11/544,353
Filed: October 4, 2006
Attorney Docket No. 15278US04

ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 23, 2010, to revive the above-identified application.

The petition is **DISMISSED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, March 12, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on June 13, 2009.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item(s) (3).

In regards to item (3): The submission filed on August 23, 2010, cannot be accepted because the statement of unintentional delay was signed by an assignee who has not properly established ownership.

In order to request or take action in a patent matter, the assignee must establish its ownership of the patent to the satisfaction of the Director. In this regard, a Statement under 37 CFR 3.73(b) must have either: (i) documentary evidence of a chain of title from the original owner to the assignee (*e.g.*, copy of an executed assignment), and a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was or concurrently is being submitted for recordation pursuant to § 3.11; or (ii) a statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (*e.g.*, reel and frame number).

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

Further correspondence with respect to this matter should be addressed as follows:

By Mail:
Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

By hand:
U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

The centralized facsimile number is **(571) 273-8300.**

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

/DCG/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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OCT 26 2010

OFFICE OF PETITIONS

MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

In re Application of :
Stacy A. LEAVITT, et al :
Application No. 11/544,353 :
Filed: October 4, 2006 :
Attorney Docket No. 15278US04 :

CORRECTION
ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 23, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, March 12, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on June 13, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $1620; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

This application is being referred to Technology Center AU 3695 for appropriate action by the Examiner in the normal course of business.

/DCG/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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MORRISON & FOERSTER LLP
755 PAGE MILL RD
PALO ALTO CA 94304-1018

MAILED

NOV 08 2010

OFFICE OF PETITIONS

In re Application of	:	
Modesitt, D. Bruce	:	DECISION ON PETITION
Application No. 11/544,365	:	TO WITHDRAW
Filed: October 6, 2006	:	FROM RECORD
Attorney Docket No. 602572000103	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed October 14, 2010.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. The Office will require the practitioner(s) to certify that he, she or they have: (1) given reasonable notice to the client, prior to the expiration of the reply period, which the practitioner(s) intends to withdraw from employment; (2) delivered to the client or a duly authorized representative of the client all papers and property (including funds) to which the client is entitled; and (3) notified the client of any replies that may be due and the time frame within which the client must respond, pursuant to 37 CFR 10.40 (c).

The request was signed by Mike Mayer on behalf of all attorneys/agents of record who are associated with Customer Number 25226. All attorneys/agents associated with Customer Number 25226 have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

All future correspondence will be directed to the assignee, Arstasis, Inc., at the address indicated below.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-3206. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

Liana Walsh
Petitions Examiner
Office of Petitions

cc: ARSTASIS, INC.
1021 HOWARD AVENUE, SUITE C
SAN CARLOS CA 94070

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

CHOATE, HALL & STEWART LLP
TWO INTERNATIONAL PLACE
BOSTON MA 02110

MAILED

MAR 20 2012

OFFICE OF PETITIONS

In re Application :
Pascal Deschatelets et al. :
Application No. 11/544,389 : DECISION ON APPLICATION
Filed: October 6, 2006 : FOR PATENT TERM ADJUSTMENT
Attorney Docket No. 2005284-0035 :

This is in response to the APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 35 U.S.C. § 154(b) AND 37 C.F.R. § 1.705(b) filed March 5, 2012. Applicant requests that the determination of patent term adjustment be corrected from 0 days to 184 days. Applicant requests this correction in part on the basis that the Office will take in excess of three years to issue this patent and is being considered in light of the recent court decision in *Wyeth v. Kappos*, 2009-1120 (Fed. Cir. 1-7-2010).

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within three years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentees are entitled to for Office failure to issue the patent within three years. See 37 CFR 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under 37 CFR 1.702(a)(4) or applicant delay under 37 CFR 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office cannot make a determination on the patent term adjustment relating to those provisions until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss such a request as premature.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicants are advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicants must timely file an application for patent term adjustment prior to the payment of the issue fee.[1]

To the extent that applicant otherwise requests correction of the patent term adjustment at the time of the mailing of the Notice of Allowance, the application for patent term adjustment is **GRANTED** to the extent indicated herein.

The Office has updated the PALM and PAIR screen to reflect that the Patent Term Adjustment (PTA) at the time of the mailing of the Notice of Allowance is 10 days. A copy of the updated PALM screen, showing the revised determination, is enclosed.

On December 6, 2011, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 0 days. The instant application for patent term adjustment was timely filed[2]. Applicants dispute the reduction of 140 days of PTA for applicant delay in filing a supplemental response on February 16, 2011 after the filing of a response to on September 29, 2010.

Applicants specifically state that the patent issuing from the application is not subject to a terminal disclaimer.

Applicants argue that "On February 16, 2011, the Applicants submitted the agreed-upon amendments. (Exhibit C). First, all the amendments filed on February 16, 2011 were requested by the examiner during the aforementioned interview and were agreed to by the applicants. This is made clear in both the Office's Interview Summary (Exhibit B, "Applicant's attorney is going to .... ") and the Applicants Interview Summary (Exhibit C, page 11, "It was agreed that Applicant would amend the claims .... "). Thus, all of the amendments and submissions of February 16, 2011 were responsive to the

[1] For example, if applicants dispute both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed, and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicants must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the § 1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

[2] PALM records indicate that the Issue Fee was also received on March 5, 2012.

examiner's requests during the interview of January 11, 2011. Second, the amendment itself was submitted in response to the Interview Summary mailed February 2, 2011. (Exhibit C, page 1.) Under 37 C.F.R. § 1.133, the Applicants were required to submit a written statement on the substance of the interview. The Office Interview Summary expressly granted a non-extendable period of one month or 30 days to file the required written statement (Exhibit B), with which the Applicants complied. Thus, the papers filed on February 16, 2011 were expressly required by the examiner and the Office. The submissions of February 16, 2011 were not an unsolicited supplemental reply."

Applicants' argument is persuasive. Pursuant to 37 CFR § 1.704(c)(8), the submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, is a failure to engage in reasonable efforts to conclude prosecution.

The record supports a conclusion that the supplemental response filed February 16, 2011 was requested by the Examiner as evidenced by the interview summary dated February 2, 2011.

In view thereof, no reduction should have been taken for the filing of the supplemental response on February 16, 2011 after the mailing of the response filed September 29, 2010. Accordingly, the period of reduction of 140 days is being removed.

In view thereof, the patent term adjustment at the time of the mailing of the notice of allowance is TEN (10) days.

Receipt of the $200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

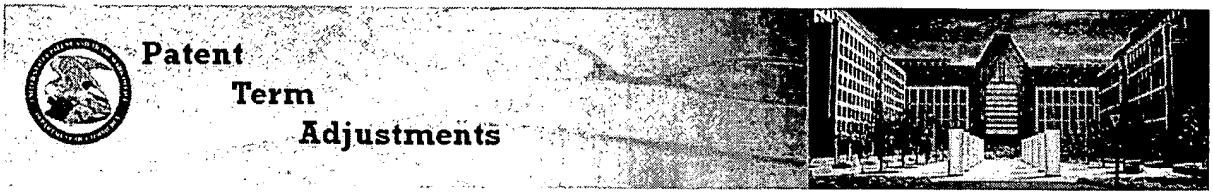
The application is being forwarded to the Office of Data Management for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3212.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of Revised PALM Screen



PTA/PTE Information | Patent Term Adjustment | Patent Term Extension

Application Number*: 11544389 Search | Explanation of PTA Calculation | Explanation of PTE Calculation

PTA Calculations for Application: 11544389

Application Filing Date	10/06/2006	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays:	471
A Delays	471	PTO Manual Adjustment	140
B Delays	0	Applicant Delay (APPL)	601
C Delays	0	Total PTA (days)	10

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
101	03/18/2012		P028	Adjustment of PTA Calculation by PTO	140	0	
85	12/06/2011	01/29/2011	MN/=.	Mail Notice of Allowance	311	60	
84	12/01/2011		OAR	Office Action Review		0	
83	12/01/2011		OAR	Office Action Review		0	
82	12/01/2011		IREV	Issue Revision Completed		0	
81	12/01/2011		DVER	Document Verification		0	
80	12/01/2011		N/=.	Notice of Allowance Data Verification Completed		0	
79	12/01/2011		DOCK	Case Docketed to Examiner in GAU		0	
78	12/01/2011		EX.A	Examiner's Amendment Communication		0	
77	12/01/2011		CNTA	Allowability Notice		0	
76	10/26/2011		CRFE	CRF Is Good Technically / Entered into Database		0	
75	10/17/2011		CRFD	CRF Is Flawed Technically / Not Entered into Database		0	
74	09/29/2011		A.PE	Preliminary Amendment		0	
67	02/22/2011		FWDX	Date Forwarded to Examiner		0	
68	02/16/2011		AF/D	Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received		0	
66	02/16/2011	09/29/2010	SA..	Supplemental Response	140	60	
65	02/02/2011		EML_NTR	Email Notification		0	
64	02/02/2011		MEXIN	Mail Examiner Interview Summary (PTOL - 413)		0	
63	01/11/2011		EXIN	Examiner Interview Summary Record (PTOL - 413)		0	
62	10/07/2010		FWDX	Date Forwarded to Examiner		0	
59	10/07/2010		ABN9	Disposal for a RCE / CPA / R129		0	
61	09/29/2010		AMSB	Amendment Submitted/Entered with Filing of CPA/RCE		0	
60	09/29/2010	03/29/2010	RCEX	Request for Continued Examination (RCE)		56	
58	09/29/2010		XT/G	Request for Extension of Time - Granted		0	
57	09/29/2010		BRCE	Workflow - Request for RCE - Begin		0	
56	03/29/2010	12/29/2009	N/AP	Notice of Appeal Filed	90	50	
55	03/29/2010		XT/G	Request for Extension of Time - Granted		0	
52	09/29/2009		ELC_RVW	Electronic Review		0	
51	09/29/2009		EML_NTF	Email Notification		0	
50	09/29/2009		MCTFR	Mail Final Rejection (PTOL - 326)		0	
49	09/25/2009		CTFR	Final Rejection		0	
54	08/25/2009		RCAP	Reference capture on IDS		0	
53	08/25/2009	06/23/2009	M844	Information Disclosure Statement (IDS) Filed	63	41	
46	08/25/2009		IDSC	Information Disclosure Statement considered		0	
44	08/25/2009		WIDS	Information Disclosure Statement (IDS) Filed		0	
42	08/05/2009		FWDX	Date Forwarded to Examiner		0	
45	06/23/2009		IDSC	Information Disclosure Statement considered		0	
43	06/23/2009		EIDS.	Electronic Information Disclosure Statement		0	
41	06/23/2009	03/23/2009	A...	Response after Non-Final Action	92	36	
40	06/23/2009		XT/G	Request for Extension of Time - Granted		0	
39	06/23/2009		WIDS	Information Disclosure Statement (IDS) Filed		0	
38	12/23/2008		ELC_RVW	Electronic Review		0	
37	12/23/2008		EML_NTF	Email Notification		0	
36	12/23/2008		MCTNF	Mail Non-Final Rejection		0	
35	12/18/2008		CTNF	Non-Final Rejection		0	
29	11/19/2008		FWDX	Date Forwarded to Examiner		0	
28	11/14/2008	08/14/2008	ELC.	Response to Election / Restriction Filed	92	24	
27	11/14/2008		XT/G	Request for Extension of Time - Granted		0	
26	05/16/2008		ELC_RVW	Electronic Review		0	
25	05/14/2008		EML_NTF	Email Notification		0	
24	05/14/2008	12/06/2007	MCTRS	Mail Restriction Requirement	160	0.5	
23	05/10/2008		CTRS	Restriction/Election Requirement		0	
21	02/06/2008		DOCK	Case Docketed to Examiner in GAU		0	
20	10/11/2007		PG-ISSUE	PG-Pub Issue Notification		0	
19	07/16/2007		TSSCOMP	IFW TSS Processing by Tech Center Complete		0	

17	07/10/2007		OIPE	Application Dispatched from OIPE		0
14	07/02/2007		COMP	Application Is Now Complete		0
16	06/29/2007		CRFE	CRF Is Good Technically / Entered into Database		0
15	06/29/2007		PGPC	Sent to Classification Contractor		0
9	06/18/2007	02/14/2007	ADDFLFEE	Additional Application Filing Fees	124	6
8	06/18/2007		SEQLIST	A set of symbols and procedures, provided to the PTO on a set of computer listings, that describe in		0
7	06/18/2007		OATHDECL	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic		0
6	11/14/2006		INCD	Notice Mailed--Application Incomplete--Filing Date Assigned		0
5	10/21/2006		L128	Cleared by L&R (LARS)		0
4	10/18/2006		L198	Referred to Level 2 (LARS) by OIPE CSR		0
3	10/18/2006		CLSS	CASE CLASSIFIED BY OIPE		0
2	10/15/2006		SCAN	IFW Scan & PACR Auto Security Review		0
18	10/06/2006		A.PE	Preliminary Amendment		0
1	10/06/2006		IEXX	Initial Exam Team nn		0
0.5	10/06/2006		EFILE	Filing date		0

Export to: Excel

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Decision Date : December 27, 2011

In re Application of :

Steven Woods

Application No : 11544449

Filed : 06-Oct-2006

Attorney Docket No : 046185-0106

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY/AGENTOF RECORD

This is an electronic decision on the Request to Withdraw as attorney or agent of record under 37 CFR § 1.36(b), filed December 27, 2011

The request is **APPROVED.**

The request was signed by Hunter, Paul (registration no. 44787) on behalf of all attorneys/agents associated with Customer Number 23524 . All attorneys/agents associated with Cusotmer Number 23524 have been withdrawn.

Since there are no remaining attorneys of record, all future communications from the Office will be directed to the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71, with correspondence address:

Name	DOUBLE FUSION INC.
Name2	
Address 1	2434 MAIN STREET
Address 2	SUITE 202
City	SANTA MONICA
State	CA
Postal Code	90405
Country	US

As a reminder, requester is required to inform the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71 of the electronically processed petition.

Telephone inquiries concerning this decision should be directed to the Patent Electronic Business Center (EBC) at 866-217-9197.

Office of Petitions

Doc Code: PET.AUTO **Document Description: Petition automatically granted by EFS-Web**	PTO/SB/83 U.S. Patent and Trademark Office Department of Commerce

Electronic Petition Request	**REQUEST FOR WITHDRAWAL AS ATTORNEY OR AGENT AND CHANGE OF CORRESPONDENCE ADDRESS**
Application Number	11544449
Filing Date	06-Oct-2006
First Named Inventor	Steven Woods
Art Unit	2451
Examiner Name	MADHU WOOLCOCK
Attorney Docket Number	046185-0106
Title	System and method for advertisement identification, selection, and distribution involving a peer-to-peer network

◉ Please withdraw me as attorney or agent for the above identified patent application and the practitioners of record associated with Customer Number: 23524

The reason(s) for this request are those described in 37 CFR:

10.40(c)(1)(iv)

Certifications

☒ I/We have given reasonable notice to the client, prior to the expiration of the response period, that the practitioner(s) intend to withdraw from employment

☒ I/We have delivered to the client or a duly authorized representative of the client all papers and property (including funds) to which the client is entitled

☒ I/We have notified the client of any responses that may be due and the time frame within which the client must respond

Change the correspondence address and direct all future correspondence to the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71:

Name	DOUBLE FUSION INC.
Address	2434 MAIN STREET SUITE 202
City	SANTA MONICA
State	CA
Postal Code	90405
Country	US

I am authorized to sign on behalf of myself and all withdrawing practitioners.	
Signature	/Hunter, Paul/
Name	Hunter, Paul
Registration Number	44787

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/544,463	10/06/2006	Kenneth E. Gonsalves	46872-335594	7324

44231 7590 09/02/2010

KILPATRICK STOCKTON LLP - 46872
J. STEVEN GARDNER
1001 WEST FOURTH STREET
WINSTON-SALEM, NC 27101

EXAMINER	
LEE, SIN J	

ART UNIT	PAPER NUMBER
1795	

MAIL DATE	DELIVERY MODE
09/02/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT and TRADEMARK OFFICE
UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
WWW.USPTO.GOV

Mailed: 9/2/10

CHK
Paper No.

In re Application of Gonsalves et al.
Serial No.: 11/544463
Filed: October 6, 2008
For: PHOTOACID GENERATORS AND
LITHOGRAPHIC RESISTS COMPRISING THE SAME

DECISION ON PETITION
UNDER *37 CFR 1.48(a)*

This is a decision on the PETITION TO CORRECT INVENTORSHIP IN A NON-PROVISIONAL PATENT APPLICATION filed December 16, 20008, to correct inventorship under 37 CFR 1.48(a) by adding the name of Mingxing Wang.

It is noted that the applicant has met the requirements of 37 C.F.R. § 1.48(a) by (1) submitting a request to correct the inventorship that sets forth the desired inventorship change; (2) providing a statement from each person being added as an inventor that the error in inventorship occurred without deceptive intention on his or her part; (3) providing a declaration of the actual inventors as required by 37 C.F.R. § 1.63 and (4) providing the processing fee set forth in 1.17(i).

The request is **GRANTED**.

The application file is being forwarded to the appropriate section of the Patent and Trademark Office for correction of the record.

_/Cynthia H. Kelly/_____
Cynthia H. Kelly,
Supervisory Patent Examiner
Technology Center 1700

J. Clinton Wimbish
KILPATRICK STOCKTON LLP
Suite 2500
214 North Tryon Street
Charlotte, NC 28202-2381

UNITED STATES PATENT AND TRADEMARK OFFICE

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FOLEY & LARDNER LLP
150 EAST GILMAN STREET
P.O. BOX 1497
MADISON WI 53701-1497

MAILED

DEC 02 2010

OFFICE OF PETITIONS

In re Application of :
Morley, et al. :
Application No. 11/544,468 : ON APPLICATION FOR
Filed: October 6, 2006 : PATENT TERM ADJUSTMENT
Atty Docket No. 053272-0110 :

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT FOR PATENT APPLICATION UNDER 37 C.F.R. § 1.705(b), filed September 22, 2010. Applicants submit that the correct patent term adjustment to be indicated on the patent is nine hundred thirty (930) days, not four hundred sixty-eight (468) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request this correction solely on the basis that the Office will take in excess of three years to issue this patent.

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentees are entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the

initial determination of patent term adjustment and a projected issuance date of the patent is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicants are advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicants must timely file an application for patent term adjustment prior to the payment of the issue fee[1].

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b). This fee is required and will not be refunded.

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

---

[1] For example, if an applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 12/22/2010

TO SPE OF : ART UNIT 1624 Wilson James (Spe)

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/544474 Patent No.: 7737134

CofC mailroom date: 11/16/2010

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Certificates of Correction Branch
703-756-1571 _____

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

☐ **Approved**	All changes apply.
☐ **Approved in Part**	Specify below which changes **do not** apply.
☐ **Denied**	State the reasons for denial below.

Comments: _____

JAMES O. WILSON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

SPE

1624
Art Unit

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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DOW AGROSCIENCES LLC
9330 ZIONSVILLE RD
INDIANAPOLIS IN 46268

MAILED

OCT 01 2010

OFFICE OF PETITIONS

In re Application of
Scott Selmer Johnson
Application No. 11/544,543
Filed: October 6, 2006
Attorney Docket No. 64333A US

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 26, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of the issue fee; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Notice of Allowance mailed January 4, 2010, is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.

This application is being referred to the Office of Data Management to be processed into a patent.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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BRENDA POMERANCE
LAW OFFICE OF BRENDA POMERANCE
310 WEST 52 STREET
SUITE 27B
NEW YORK NY 10019

MAILED
FEB 17 2011
OFFICE OF PETITIONS

In re Application of :
Allan D. Grody et al :
Application No. 11/544,570 : ON PETITION
Filed: October 10, 2006 :
Attorney Docket No. 0710-4001

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 18, 2010 and supplemented on December 21, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to file a proper reply in a timely manner to the Office action mailed January 30, 2009. A Notice was mailed on May 18, 2009. A Notice of Abandonment was mailed on February 4, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a continuing application under 37 CFR 1.53(b); (2) the petition fee of $810.00; and (3) a proper statement of unintentional delay.

This application is being revived solely for purposes of continuity. As continuity has been established by this decision, the application is again abandoned in favor of continuing application No. 12/927,597, filed November 18, 2010.

As to the Request For Refund submitted on December 21, 2010:

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. *See* In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the $1,175.00 extension of time fee submitted with the petition on November 18, 2010 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's credit card account as it is the method in which the fee was paid.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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JUL 08 2011

OFFICE OF PETITIONS

VORYS, SATER, SEYMOUR & PEASE LLP
19098 K ST., NW
9TH FLOOR
WASHINGTON DC 20006-1152

In re Application of	:	
Nader M. Habashi	:	
Application No. 11/544,621	:	DECISION ON PETITION
Filed: October 10, 2006	:	
Attorney Docket No. 060547-000004UTL	:	

This is a decision on the petition, filed April 8, 2011, under 37 CFR 1.181(a) to Withdraw Holding of Abandonment.

The petition under 37 CFR 1.181(a) is **GRANTED**.

A Notice of Abandonment was mailed on March 15, 2011.

The petition states that "A Notice of Appeal was filed on September 29, 2010. Under 37 CFR 41.37(a)(1) a brief was due to be filed within two months of the date of filing the Notice of Appeal or any extension thereof under 37 CFR 41.37(e). According to 37 CFR 41.37(e), the time period is extendable under the provisions of 37 CFR 1.136. Under 37 CFR 1.136(a)(1), the time period is extendable by five months. Accordingly, the final deadline for filing an appropriate response is **April 29, 2011**, i.e., 2 months until November 29, 2010 and then an additional five month is until April 29, 2011."

A review of Office finance records show that an extension of time fee of $1,175.00 (five months extension) was paid on April 29, 2011. A Request for Continued Examination (RCE) and an amendment was also filed on April 29, 2011.

In view of the above, the holding of abandonment is hereby withdrawn and the application restored to pending status.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.

This application is being referred to Technology Center AU 3715 for appropriate action by the Examiner in the normal course of business on the reply received April 29, 2011.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Pearl Cohen Zedek Latzer, LLP
1500 Broadway
12th Floor
New York NY 10036

MAILED
FEB 15 2012
OFFICE OF PETITIONS

In re Patent No. 7,368,484 :
Issued: 05/06/2008 :
Application No. : NOTICE
Filed: 10/10/2006 :
Attorney Docket No. P-4476-US2 :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed January 23, 2012.

The Office no longer investigates or rejects original or reissue patent under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3211.

/Christina Tartera Donnell/

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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CONTINENTAL TEVES, INC.
ONE CONTINENTAL DRIVE
AUBURN HILLLS MI 48326-1581

MAILED

DEC 06 2010

OFFICE OF PETITIONS

In re Application of :
Adrian M. Crimpita :
Application No. 11/544,683 : DECISION ON PETITION
Filed: October 6, 2006 :
Attorney Docket No. **AB168** :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 22, 2010, to revive the above-identified application.

There is no indication that the petition is signed by a Edwin Bacon registered patent attorney or patent agent of record. However, in accordance with 37 CFR 1.34, the signature of Mr. Bacon appearing on the correspondence shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party in whose behalf he acts. If, Mr. Bacon desires to be acknowledged as the attorney of record in this file, the appropriate power of attorney documents must be submitted.

This application became abandoned for failure to timely pay the issue and publication fees on or before September 13, 2010, as required by the Notice of Allowance and Fee(s) Due, mailed June 11, 2010. Accordingly, the date of abandonment of this application is September 14, 2010.

The petition is hereby **GRANTED**.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1,510 and the publication fee of $300, (2) the petition fee of $1,620; and (3) a proper statement of unintentional delay.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

Telephone inquiries concerning this decision should be directed to JoAnne Burke at (571) 272-4584.

This application is being referred to the Office of Data Management for processing into a patent.

JoAnne Burke
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/544,685	10/06/2006	Bruce Matichuk	062A.0001.U1(US)	8327

29683 7590 02/08/2011
HARRINGTON & SMITH
4 RESEARCH DRIVE, Suite 202
SHELTON, CT 06484-6212

EXAMINER	
YANG, I CHAN	
ART UNIT	PAPER NUMBER
2178	
MAIL DATE	DELIVERY MODE
02/08/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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4 RESEARCH DRIVE, Suite 202
SHELTON CT 06484-6212

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FEB 07 2011

TECHNOLOGY CENTER 2100

In re Application of:
MATICHUK, Bruce et al.
Application No. 11/544,685
Filed: October 6, 2006
For: **REDACTION ENGINE FOR ELECTRONIC DOCUMENTS WITH MULTIPLE TYPES, FORMATS AND/OR CATEGORIES**

DECISION ON PETITION UNDER 37 C.F.R. § 1.181

This is a decision on the petition filed December 23, 2010 to withdraw the finality of the Office action mailed August 4, 2010.

The petition is **GRANTED**.

BACKGROUND

"1. The examiner issued a office action on 08/04/2010 which was marked 'final'. The office action included a rejection of claim 40 with a new grounds of rejection."

"2. In an amendment filed 11/23/2010 applicants' attorney requested the examiner to withdraw the finality of the office action because it was the first time the examiner rejected claim 40 based upon the new grounds of rejection."

"3. The examiner issued an Advisory Action mailed 12/22/2010 which indicated that the finality of the office action mailed 08/04/2010 would not be withdrawn."

RULES AND PROCEDURES

MPEP § 706.07(a) states in part that:

> "Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new grounds of rejection that is neither necessitated by applicant's amendment of the claims, nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) where the fee set forth in 37 CFR 1.17(p)."

DECISION

In the final Office action mailed August 4, 2010, claim 40 was rejected under 35 USC 102(b) as being anticipated by Torres. A comparison of the final Office action and the action mailed January 21, 2010 reveals that the anticipatory rejection of claim 40 by Torres is a new grounds of rejection. However, upon reviewing the amendment filed April 23, 2010, claim 40 is in its original, unamended form. The final Office action is in response to this amendment. Therefore, the rejection of claim 40 can not be made final since the new grounds of rejection was "neither necessitated by applicant's amendment of the claims, nor based on information submitted in an information disclosure statement."

Accordingly, the petition is **GRANTED,** and the finality of the Office action mailed August 4, 2010 has been withdrawn.

Furthermore, the amendment filed November 23, 2010 will be treated as a reply filed under 37 C.F.R. § 1.111(b), and entered as a matter of right. The examiner of record will continue examination based on the entry of this amendment.

Any inquiry regarding this decision should be directed to Eddie C. Lee at (571) 272-1732.

Wendy Garber
Director, Technology Center 2100

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH VA 22040-0747

MAILED

JUN 10 2011

OFFICE OF PETITIONS

In re Patent No. 7,652,701 :
Issue Date: January 26, 2010 :
Application No. 11/544,757 : DECISION ON PETITION
Filed: October 10, 2006 :
Attorney Docket No. 0378-0381PUS2 :

This is a decision on the Request Under 37 C.F.R. §To Change Assignee's Identification and Request For Certificate Of Correction Pursuant To 37 CFR 1.323, filed February 3, 2011 which is being treated as a Petition Under 37 CFR §3.81(b), to identify the correct assignee's address. A completed Certificate of Correction Form (PTO/SB/44) was submitted with Petition.

The petition under 37 CFR §3.81(b) is **GRANTED**.

Petitioner urges that the present Petition was submitted to correct the assignee's address on the previously submitted PTOL 85B and such error was inadvertent. Accordingly, petitioner requests, in effect, that the Title Page of the above-identified patent be corrected, via issuance of Certificate of Correction, to correct the assignee's name identified thereon from:

"Fujifilm Corporation, **Osaka-shi (JP)**"

to:

--Fujifilm Corporation, **Tokyo (JP)**--

37 CFR 3.81(b), effective June 25, 2004, reads:

> *After payment of the issue fee:* Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in §3.11 before issuance of the patent, and must include a request for a certificate of correction under §1.323 of this chapter (accompanied by the fee set forth in §1.20(a) and the processing fee set forth in §1.17(i) of this chapter.

The requisite $100.00 fee (Fee Code 1811), as set forth under 37 CFR 1.20(a), and the requisite $130.00 petition fee (Fee Code 1464), as set forth under 37 CFR 1.17(i) have been submitted. Further, Office assignment records are consistent with the requested correction. Accordingly, since the Petition complies with the provisions of 37 CFR 3.81(b), it is appropriate for the Office to issue a Certificate of Correction in accordance with the content of the Form PTO/SB/44 submitted with the Petition.

Inquiries related this communication should be directed to the undersigned at (571)272-3213.

Any questions concerning the issuance of a Certificate of Correction should be directed to the Certificates of Correction Branch at (571) 272-4200.

This matter is being referred to the Certificates of Correction Branch for processing of a Certificate of Correction in U.S. Patent No. 7,652,701.

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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DUNLAP CODDING, P.C. - CRISTAL
P.O. BOX 16370
OKLAHOMA CITY OK 73113

MAILED

AUG 12 2010

OFFICE OF PETITIONS

In re Application of :
Lance Jacobsen et al. :
Application No. 11/544,820 :
Filed: October 6, 2006 :
Attorney Docket No. **16561.103** :

DECISION ON PETITION
UNDER § 1.183

This is a decision in response to the petition filed March 16, 2010, under 37 CFR § 1.183 for waiver of the requirement under 37 CFR § 1.131 that all of the inventors sign the declaration of prior inventorship.

The petition under 37 CFR 1.183 is **DISMISSED**.

The above-identified application was filed on October 6, 2006, with a 37 CFR 1.63 declaration signed by all of the inventors. With the instant petition, applicants filed a 37 CFR § 1.131 declaration. The 37 CFR § 1.131 declaration was executed by joint inventor Lance Jacobsen but not by joint inventor Adam Benish. Applicants have filed the instant petition to have the 37 CFR § 1.131 declaration accepted as signed by Jacobsen on his own behalf and on behalf of non-signing inventor Benish.

37 CFR 1.131 states, in pertinent part:

> When any claim of an application or a patent under reexamination is rejected, the inventor of the subject matter of the rejected claim, the owner of the patent under reexamination, or the party qualified under §§ 1.42, 1.43, or 1.47, may submit an appropriate oath or declaration to establish invention of the subject matter of the rejected claim prior to the effective date of the reference or activity on which the rejection is based.

In addition, the Manual of Patent Examining Procedure states that "an application or declaration by less than all named inventors of an application is accepted where it is shown that less than all named inventors of an application invented the subject matter of the claim or claims under rejection."

Here, there has not been a party qualified under 37 CFR 1.42, 1.43, or 1.47. In addition, applicants do not contend that less than all of the named inventors of the application invented the subject matter of the claims under rejection. Accordingly, the proper parties to sign the 37 CFR § 1.131 declaration include all of the joint inventors.

In order for a petition under 37 CFR § 1.183 to be granted to waive this requirement that joint inventor Benish sign the 37 CFR § 1.131 declaration, petitioner must demonstrate that this is an extraordinary situation where justice requires waiver of the rules.

On instant petition, applicants argue that join inventor Benish is deceased. Applicants have not however, provided any evidence to show that joint inventor Benish is deceased or that steps have been taken to obtain the signature of his legal representative on the 37 CFR § 1.131 declaration. Thus, applicants have not shown that a bona fide effort was made to reach or locate the legal representative of joint inventor Benish to present the 37 CFR § 1.131 declaration and supporting documentation.

Under the circumstances, therefore, it is concluded that petitioner has not demonstrated that this is an extraordinary situation, warranting waiver of the rules.[1]

Before the Declaration under 37 CFR 1.131 can be entered, petitioner must provide details, in an affidavit or declaration of facts by a person with first hand knowledge of the details, to identify and to send the declaration to the last known address of the legal representative of Adam Benish, or of the **additional efforts**, such as Internet, e-mail, or telephone directory searches, which have been undertaken to locate the legal representative, or an updated address for them, send or give a copy of the application papers to them, and request that they sign and return the declaration. If repeated attempts to contact the legal representative by telephone, mail, and e-mail, are unsuccessful, petitioners will have established that they cannot be found despite diligent efforts.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-8300

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

[1] MPEP 409.03(d).

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OKLAHOMA CITY OK 73113

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MAY 08 2011

OFFICE OF PETITIONS

In re Application of :
Lance Jacobsen et al. :
Application No. 11/544,820 :
Filed: October 6, 2006 :
Attorney Docket No. **16561.103** :
4820

DECISION ON PETITION
UNDER § 1.183

This is a decision in response to the renewed petition filed April 26, 2011, under 37 CFR § 1.183 for waiver of the requirement under 37 CFR § 1.131 that all of the inventors sign the declaration of prior inventorship.

The petition under 37 CFR 1.183 is **GRANTED**.

The above-identified application was filed on October 6, 2006, with a 37 CFR 1.63 declaration signed by all of the inventors. With a petition under 37 CFR § 1.183, on March 16, 2010, applicants filed a 37 CFR § 1.131 declaration executed by joint inventor Lance Jacobsen but not by joint inventor Adam Benish, to have the 37 CFR § 1.131 declaration accepted as signed by Jacobsen on his own behalf and on behalf of non-signing inventor Benish, arguing that that join inventor Benish is deceased. The petition was dismissed in a decision mailed August 12, 2010 because Applicants did not provide any evidence to show that joint inventor Benish is deceased or that steps have been taken to obtain the signature of his legal representative on the 37 CFR § 1.131 declaration. Thus, applicants failed to show that a bona fide effort was made to reach or locate the legal representative of joint inventor Benish to present the 37 CFR § 1.131 declaration and supporting documentation.

37 CFR 1.131 states, in pertinent part:

> When any claim of an application or a patent under reexamination is rejected, the inventor of the subject matter of the rejected claim, the owner of the patent under reexamination, or the party qualified under §§ 1.42, 1.43, or 1.47, may submit an appropriate oath or declaration to establish invention of the subject matter of the rejected claim prior to the effective date of the reference or activity on which the rejection is based.

In addition, the Manual of Patent Examining Procedure states that "an application or declaration by less than all named inventors of an application is accepted where it is shown that less than all named inventors of an application invented the subject matter of the claim or claims under rejection."

Here, there has not been a party qualified under 37 CFR 1.42, 1.43, or 1.47. In addition, applicants do not contend that less than all of the named inventors of the application invented the subject matter of the claims under rejection. Accordingly, the proper parties to sign the 37 CFR § 1.131 declaration include all of the joint inventors.

In order for a petition under 37 CFR § 1.183 to be granted to waive this requirement that joint inventor Benish sign the 37 CFR § 1.131 declaration, petitioner must demonstrate that this is an extraordinary situation where justice requires waiver of the rules.

On instant renewed petition, applicants have established that joint inventor Benish is deceased and therefore unavailable to execute the 37 CFR § 1.131 declaration. The declaration presented is signed by all of the remaining joint inventors. Under the circumstances, it is concluded that petitioner has demonstrated that this is an extraordinary situation, warranting waiver of the rules.

The petition is granted to the extent that the 37 CFR § 1.131 declaration may be entered, despite the fact that its requirement that all of the inventors sign the declaration has not been satisfied. This is not a decision on the merits of the declaration.

The authorization for payment of the petition fee in the amount of $400 was previously made and has been appropriately charged and applied.

This matter is being referred to Technology Center 1733 for consideration on the merits of the reply and the 37 CFR § 1.131 declaration, filed June 10, 2009 and resubmitted March 16, 2010.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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EDWARDS LIFESCIENCES CORPORATION
LEGAL DEPARTMENT
ONE EDWARDS WAY
IRVINE CA 92614

MAILED
JAN 25 2011
OFFICE OF PETITIONS

In re Application of	:	
Spenser et al.	:	
Application No. 11/544,822	:	DECISION ON PETITION
Filed: October 5, 2006	:	
Attorney Docket No. PVI-5862CON	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 10, 2011, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely submit Corrected Drawings on or before November 5, 2010, as required by the Notice of Allowance and Fee(s) Due and the Notice of Allowability, mailed August 5, 2010. Accordingly, the date of abandonment of this application is August 6, 2010. A Notice of Abandonment was mailed November 19, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) Corrected Drawings, (2) the petition fee of $1,620.00; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

This application is being referred to Publishing Division for processing into a patent and review of the Corrected Drawings submitted with the instant petition.

Joan Olszewski
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MAILED

SEP 29 2011

OFFICE OF PETITIONS

WILSON HAM & HOLMAN
1811 SANTA RITA ROAD, STE. 130
PLEASANTON, CA 94566

In re Application of
Vipin Jain, et al.
Application No. 11/544,825
Filed: October 6, 2006
Attorney Docket No.: RIVERSTONE 94

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b) to revive the above-identified application, filed September 20, 2011.

The petition is **GRANTED**.

The application became abandoned for failure to timely pay the issue and publication fees on or before August 31, 2011, as required by the Notice of Allowance and Fee(s) Due mailed May 31, 2011. On September 20, 2011, the present petition was filed. A Notice of Abandonment was subsequently mailed on September 14, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of the $1,510 issue fee and $300 publication fee; (2) the petition fee of $1,620; and (3) an adequate statement of unintentional delay.

The application is being referred to the Office of Data Management to be processed into a patent.

Telephone inquires related to this decision should be directed to the undersigned at (571) 272-3204. Telephone inquiries related to processing as a patent should be directed to (571) 272-4200.

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Lawrence R. Oremland, P.C.
Suite C-214
5055 E. Broadway Blvd.
Tucson AZ 85711

MAILED

AUG 27 2010

OFFICE OF PETITIONS

In re Patent of Smith et al. :
Patent No. 7,612,892 :
Issue Date: November 3, 2009 : DECISION ON REQUEST
Application No. 11/544,833 : FOR RECONSIDERATION OF
Filed: October 5, 2006 : PATENT TERM ADJUSTMENT
Docket No. 6162.103US :

This is a decision on the petition under 37 CFR 1.705(d), filed May 21, 2010, requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one hundred sixty-eight (168) days. The petition was timely filed within one month of the mailing of a Decision on Request for Recalculation of Patent Term Adjustment in View of Wyeth and Notice of Intent to Issue Certificate of Correction, mailed April 21, 2010.

The request is **DISMISSED**.

Patentees are given one (1) month or thirty (30) days, whichever is longer, to respond to this decision. No extensions of time will be granted under § 1.136(a).

The Decision on Request for Recalculation of Patent Term Adjustment in View of Wyeth and Notice of Intent to Issue Certificate of Correction, mailed April 21, 2010, states that if patentees desire to file a request for reconsideration of the patent term adjustment set for the in the decision, that patentees must file a petition and include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e).

Patentees have filed a petition for reconsideration of the patent term adjustment and set forth a detailed explanation as to their calculation of the patent term adjustment. However, patentees failed to submit the $200.00 fee required by 37 CFR

1.18(e) and no general authorization to charge fees under 37 CFR 1.18 to a deposit account has been filed after the mailing of a Notice of Allowance.

Payment of the fee is a prerequisite to consideration of the request for reconsideration of patent term adjustment. Accordingly, the request is dismissed for failure to submit the fee under § 1.18(e).

Further correspondence with respect to this decision should be addressed as follows:

By mail:	Mail Stop Petition Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450
By fax:	(571) 273-8300 ATTN: Office of Petitions
By hand:	Customer Service Window Randolph Building 401 Dulany Street Alexandria, VA 22314

Correspondence may also be submitted electronically via EFS-Web.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

HITACHI GLOBAL STORAGE TECHNOLOGIES, INC.
5600 COTTLE ROAD, NHGB/0142
IP DEPARTMENT
SAN JOSE, CA 95193

Mail Date: 01/18/2011

Applicant	: Hitoshi Yoshida	: DECISION ON REQUEST FOR
Patent Number	: 7586707	: RECALCULATION of PATENT
Issue Date	: 09/08/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 11/544,883	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 10/05/2006	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **203** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

HITACHI GLOBAL STORAGE TECHNOLOGIES, INC.
5600 COTTLE ROAD, NHGB/0142
IP DEPARTMENT
SAN JOSE, CA 95193

Mail Date: 01/18/2011

Applicant	: Masaki Kuwashima	: DECISION ON REQUEST FOR
Patent Number	: 7587550	: RECALCULATION of PATENT
Issue Date	: 09/08/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 11/544,914	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 10/05/2006	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **399** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

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STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.
1100 NEW YORK AVENUE, N.W.
WASHINGTON DC 20005

MAILED

APR 15 2011

OFFICE OF PETITIONS

In re Patent No. 7,629,594 :
Issue Date: December 8, 2009 :
Application No. 11/544,930 : DECISION ON PETITION
Filed: October 10, 2006 :
Attorney Docket No. 1857.8190000 :

This is a decision on the Request For Certificate Of Correction Under 37 C.F.R. §1.323 For Applicant's Mistake, filed December 20, 2010, requesting correction on the Title Page of the subject patent, to accept the omission of the second assignee's name and residence and correct an inventor's name. The request is being treated as a Petition Under 37 CFR §3.81(b). A completed Certificate of Correction Form (PTO/SB/44) was submitted with petition

The petition under 37 CFR §3.81(b) is **GRANTED**.

Petitioner requests that the present Petition was submitted to accept the omission of the second assignee's name and residence and correct an inventor's name and that such error was applicant's mistake. Accordingly, petitioner requests that a Certificate of Correction (PTO/SB/44) be issued to add the omitted second assignee's name and residence and correct an inventor's name to the Title Page of the Letters Patent.

37 CFR 3.81(b), effective June 25, 2004, reads:

> *After payment of the issue fee:* Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in § 3.11 before issuance of the patent, and must include a request for a certificate of correction under § 1.323 of this chapter (accompanied by the fee set forth in § 1.20(a) and the processing fee set forth in § 1.17(i) of this chapter.

The requisite $100.00 fee (Fee Code 1811), as set forth under 37 CFR 1.20(a), and the requisite $130.00 processing fee (Fee Code 1464), as set forth under 37 CFR 1.17(i), have been submitted. Further, Office assignment records are consistent with the requested correction. Accordingly, since the Petition complies with the provisions of 37 CFR 3.81(b), it is appropriate for the Office to issue a Certificate of Correction in accordance with the content of the Form (PTO/SB/44) submitted with Petition.

Inquiries related this communication should be directed to undersigned at (571)272-3213.

Any questions concerning the issuance of a Certificate of Correction should be directed to the Certificates of Correction Branch at (703)756-1814.

This matter is being referred to the Certificates of Correction Branch for processing of a Certificate of Correction in U.S. Patent No. 7,629,594.

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

PTO/SB/66 (03-09)
Approved for use through 03/31/2012. OMB 0651-0016
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
7,239,174	2007-07-03	11/545,044	2006-10-10	TIER-0018.USP1D

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

SMALL ENTITY

☐ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☒ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

NOT Small Entity			Small Entity		
	Fee	Code		Fee	Code
◉	3 ½ year	(1551)	○	3 ½ year	(2551)
○	7 ½ year	(1552)	○	7 ½ year	(2552)
○	11 ½ year	(1553)	○	11 ½ year	(2553)

SURCHARGE

The surcharge required by 37 CFR 1.20(i)(2) (Fee Code 1558) must be paid as a condition of accepting unintentionally delayed payment of the maintenance fee.

MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition.

STATEMENT

THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL

PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

I certify, in accordance with 37 CFR 1.4(d)(4) that I am

◉ An attorney or agent registered to practice before the Patent and Trademark Office

○ A sole patentee

○ A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.

○ A joint patentee; all of whom are signing this e-petition

○ The assignee of record of the entire interest

PTO/SB/66 (03-09)
Approved for use through 03/31/2012. OMB 0651-0016
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature			
Signature	/Jose S. Garcia/	Date (YYYY-MM-DD)	2011-08-24
Name	Jose S. Garcia	Registration Number	43628

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/ or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.**

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.

2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.

6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).

7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.

9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

UNITED STATES PATENT AND TRADEMARK OFFICE

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In re Patent No. 7239174
Issue Date: July 3,2007
Application No. 11545044
Filed: October 10,2006
Attorney Docket No. MADURAWE040

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed August 24,2011 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of August 24,2011 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

UNITED STATES PATENT AND TRADEMARK OFFICE

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OCT 18 2010

OFFICE OF PETITIONS

ALSTON & BIRD LLP
BANK OF AMERICA PLAZA
101 SOUTH TRYON STREET,
SUITE 4000
CHARLOTTE NC 28280-4000

In re Application of	:	
Jason Michael STUMP, et al	:	
Application No. 11/545,051	:	DECISION ON PETITION
Filed: October 6, 2006	:	TO WITHDRAW
Attorney Docket No. 054243/342043	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed September 27, 2010.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. The Office requires the practitioner(s) requesting withdrawal to certify that he, she, or they have: (1) given reasonable notice to the client, prior to the expiration of the response period, that the practitioner(s) intends to withdraw from employment; (2) delivered to the client or a duly authorized representative of the client all papers and property (including funds) to which the client is entitled; and (3) notified the client of any responses that may be due and the time frame within which the client must respond, pursuant 37 CFR 10.40(c).

The request was signed by W. Murray Spruill on behalf of the attorneys of record associated with Customer No. 00826.

The attorneys of record associated with Customer No. 00826 have been withdrawn.

Applicant is reminded that there is no attorney of record at this time.

The correspondence address of record has been changed and the new correspondence address is the address indicated below until otherwise properly notified.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

/Diane Goodwyn/
Diane Goodwyn
Petitions Examiner
Office of Petitions

cc: EMTHRAX, LLC
3527 WALTON WAY EXT.
AUGUSTA, GA 30909

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/545,051	10/06/2006	Michael Jason Stump	054243/342043

CONFIRMATION NO. 9928

826
ALSTON & BIRD LLP
BANK OF AMERICA PLAZA
101 SOUTH TRYON STREET, SUITE 4000
CHARLOTTE, NC 28280-4000

POWER OF ATTORNEY NOTICE

OC000000043978394

Date Mailed: 10/13/2010

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 09/27/2010.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

/dcgoodwyn/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

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Mitja Hinderks
1015 Gayley Avenue, No. 1228
Los Angeles, CA 90024

MAILED

JUN 15 2011

OFFICE OF PETITIONS

In re Application of :
Mitja Victor Hinderks :
Application No. 11/545,053 : DECISION ON PETITION
Filed: October 6, 2006 :
:

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 26, 2011, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before February 12, 2010, as required by the Notice of Allowance and Fee(s) Due, mailed November 12, 2009. Accordingly, the date of abandonment of this application is February 13, 2011. The Notice of Abandonment was mailed February 16, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $755 and the publication fee of $300, (2) the petition fee of $810; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to Terri Johnson at (571) 272-2991.

This application is being referred to Office of Data Management for processing into a patent.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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JOHN M. NOVOSEL, SR.
12708 PEMBROKE LANE
LEAWOOD, KS 66209

MAILED

MAR 28 2011

OFFICE OF PETITIONS

In re Application of :
John Michael Novosel, Sr. :
Application No. 11/545,055 : DECISION ON PETITION
Filed: October 10, 2006 :
Attorney Docket No. Player :

This is a decision on the renewed petition, filed January 20,2011, which is being treated as a petition under 37 CFR 1.8(b), requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely respond to the non-final Office action of February 25, 2010, which set a shortened statutory period for reply of three (3) months. Accordingly, a reply was due on or before May 25, 2010.

Petitioner states that a timely reply was mailed via certificate of mailing on August 24, 2010, which included the following papers: an amendment with a three month extension of time and an information disclosure statement. The original reply is in the file.

The petition satisfies the above requirements of 37 CFR 1.8(b). Accordingly, the holding of abandonment for failure to timely file a reply to the Office action of February 25, 2010 is hereby **withdrawn** and the **application restored to pending status**.

Telephone inquiries concerning this decision should be directed to the April M. Wise at 571-272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

This application is being referred to Technology Center AU 3715 for processing of the amendment previously filed August 24, 2010.

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Decision Date : December 27, 2011

In re Application of :

Steven Woods

Application No : 11545057

Filed : 06-Oct-2006

Attorney Docket No : 046185-0102

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY/AGENTOF RECORD

This is an electronic decision on the Request to Withdraw as attorney or agent of record under 37 CFR § 1.36(b), filed December 27, 2011

The request is **APPROVED.**

The request was signed by Hunter, Paul (registration no. 44787) on behalf of all attorneys/agents associated with Customer Number 23524 . All attorneys/agents associated with Cusotmer Number 23524 have been withdrawn.

Since there are no remaining attorneys of record, all future communications from the Office will be directed to the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71, with correspondence address:

Name	DOUBLE FUSION INC.
Name2	
Address 1	2434 MAIN STREET
Address 2	SUITE 202
City	SANTA MONICA
State	CA
Postal Code	90405
Country	US

As a reminder, requester is required to inform the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71 of the electronically processed petition.

Telephone inquiries concerning this decision should be directed to the Patent Electronic Business Center (EBC) at 866-217-9197.

Office of Petitions

Doc Code: PET.AUTO **Document Description: Petition automatically granted by EFS-Web**	PTO/SB/83 U.S. Patent and Trademark Office Department of Commerce

Electronic Petition Request	**REQUEST FOR WITHDRAWAL AS ATTORNEY OR AGENT AND CHANGE OF CORRESPONDENCE ADDRESS**
Application Number	11545057
Filing Date	06-Oct-2006
First Named Inventor	Steven Woods
Art Unit	2442
Examiner Name	JASON RECEK
Attorney Docket Number	046185-0102
Title	Service and messaging infrastructure to support creation of distributed, peer to peer applications with a service oriented architecture

◉ Please withdraw me as attorney or agent for the above identified patent application and the practitioners of record associated with Customer Number: 23524

The reason(s) for this request are those described in 37 CFR:

10.40(c)(1)(iv)

Certifications

☒ I/We have given reasonable notice to the client, prior to the expiration of the response period, that the practitioner(s) intend to withdraw from employment

☒ I/We have delivered to the client or a duly authorized representative of the client all papers and property (including funds) to which the client is entitled

☒ I/We have notified the client of any responses that may be due and the time frame within which the client must respond

Change the correspondence address and direct all future correspondence to the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71:

Name	DOUBLE FUSION INC.
Address	2434 MAIN STREET SUITE 202
City	SANTA MONICA
State	CA
Postal Code	90405
Country	US

I am authorized to sign on behalf of myself and all withdrawing practitioners.	
Signature	/Hunter, Paul/
Name	Hunter, Paul
Registration Number	44787

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 10/29/10

TO SPE OF : ART UNIT 2611 Richard Mack (SPE)

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/545079 Patent No.: 7555590

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D40-A
Palm Location 7580

Certificates of Correction Branch
703-756-1571 _____

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☐ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: _____

_____

_____

_____

_____

_____ _____
SPE **Art Unit**

Receipt date: 10/29/2010 11545079 - GAU: 2111

1

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 10/29/10

TO SPE OF : ART UNIT 2111 Rinehart Mark (SPE)

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/545079 Patent No.: 7555590

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D40-A
Palm Location 7580

Certificates of Correction Branch
703-756-1571

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☒ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: Amendment corrects antecedent basis so that a claim depending from a method recites a method rather than a circuit.

/Mark Rinehart/
Supervisory Patent Examiner
Art Unit 2111

/Matthew Spittle/ 03/09/2011
SPE Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
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SEARETE LLC
1756-114TH AVE. S.E., SUITE 110
BELLEVUE, WA 98004

MAILED

MAR 25 2011

OFFICE OF PETITIONS

In re Application of :
COHEN, et al :
Application No. 11/545,094 : DECISION ON PETITION
Filed: October 5, 2006 : TO WITHDRAW
Attorney Docket No. 0306A-003-006-C00001 : FROM RECORD
:

This is a decision on the Request to Withdraw as attorney or agent under 37 C.F.R. § 1.36(b) filed January 26, 2011.

The request is **NOT APPROVED**.

The Office will no longer approve requests from practitioners to withdraw from applications where the requesting practitioner is acting, or has acted, in a representative capacity pursuant to 37 CFR 1.34. In these situations, the practitioner is responsible for the correspondence the practitioner files in the application while acting in a representative capacity. As such, there is no need for the practitioner to obtain the Office's permission to withdraw from representation. However, practitioners acting in a representative capacity, like practitioners who have a power of attorney in the application, remain responsible for noncompliance with 37 CFR 1.56, as well as 37 CFR 10.18, with respect to documents they file.

A review of the file record indicates that Lewis C. Lee and the attorneys associated with Customer Number 49651 do not have power of attorney in this patent application. See 37 C.F.R. § 10.40. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is not applicable.

Further, the request to withdraw from record cannot be approved because the request to change the correspondence address is not accompanied by a power of attorney nor is the correspondence address that of an assignee of the entire interest who has been properly made of record under 37 CFR 3.71 or the first named inventor.

All future communications from the Office will continue to be directed to the above-identified address until otherwise properly notified.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-6735.

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

cc: MARGARET ANDERSON
106 E. 6TH STREET, SUITE 900
AUSTIN TX 78701

LEWIS C. LEE
601 W RIVERSIDE, SUITE 1400
SPOKANE, WA 99201

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MONSANTO COMPANY
800 N. LINDBERGH BLVD.
ATTENTION: GAIL P. WUELLNER, IP PARALEGAL, (E1NA)
ST. LOUIS MO 63167

MAILED

SEP 13 2010

OFFICE OF PETITIONS

In re Patent No. 7,723,568 :
Issued: May 25, 2010 :
Application No. 11/545,106 : ON PETITION
Filed: October 10, 2006 :
Attorney Docket No: **38-15(53429)112**

This is a decision on the REQUEST for RECONSIDERATION UNDER 37 C.F.R. § 1.705 filed July 6, 2010. Applicant requests that the determination of patent term adjustment be corrected from 300 days to 320 days.

The application for patent term adjustment-post grant is **DISMISSED.**

On May 25, 2010, the above-identified application matured into U.S. Patent No. 7,723,568 with a revised patent term adjustment of 300 days. The instant application for patent term adjustment (with required fee), asserts that after the issuance of the patent, additional delays were recorded that revised the Patent Term Adjustment. Pursuant to 37 C.F.R. § 1.704(c)(10), a period of reduction totaling 20 days was entered for applicant filing papers after the mailing of the notice of allowance. Applicants argues that the 1.132 amendment was initiated due to Examiner's failure to address the priority issue, and is not due to Appellants' failure to engage in reasonable efforts to conclude processing or examination" and disputes the reduction of 20 days of applicant delay.

37 CFR § 1.704(c)(10) provides that:

> Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:
> (i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper;
> or
> (ii) Four months;

The reduction has been considered and a reduction is found to be warranted. It is undisputed the amendment under 37 CFR 1.312 was filed February 3, 2010after the mailing of the Notice of Allowance. This was properly a basis for reduction of patent term adjustment pursuant to § 1.704(c)(10).

As stated in MPEP 2732:

> 37 CFR 1.704(c)(10) establishes submission of an amendment under 37 CFR 1.312 or other paper after a notice of allowance has been given or mailed as a circumstance that constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application. The submission of amendments (or other papers) after an application is allowed may cause substantial interference with the patent issue process.
>
> Certain papers filed after allowance are not considered to be a failure to engage in reasonable efforts to conclude processing or examination of an application. See *Clarification of 37 CFR 1.704(c)(10) – Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance has been Mailed*, 1247 Off. Gaz. Pat. Office 111 (June 26, 2001). The submission of the following papers after a "Notice of Allowance" is not considered a failure to engage in reasonable efforts to conclude processing or examination of an application: (1) Fee(s) Transmittal (PTOL-85B); (2) Power of Attorney; (3) Power to Inspect; (4) Change of Address; (5) Change of Status (small/not small entity status); (6) a response to the examiner's reasons for allowance or a request to correct an error or omission in the "Notice of Allowance" or "Notice of Allowability;" and (7) letters related to government interests (e.g., those between NASA and the Office). Papers that will be considered a failure to engage in reasonable efforts to conclude processing or examination of an application include: (1) a request for a refund; (2) a status letter; (3) amendments under 37 CFR 1.312; (4) late priority claims; (5) a certified copy of a priority document; (6) drawings; (7) letters related to biologic deposits; and (8) oaths or declarations.

An amendment under 37 CFR 1.312 is clearly stated as a failure to engage. It is undisputed that such an amendment was filed. The fact that applicant believes the amendment was due to Examiner's failure to address the priority issue does not negate the fact that applicant by definition both failed to engage in reasonable efforts to conclude examination and interfered with the patent issuance process by filing the amendment.

In view thereof, the patent term adjustment indicated in the patent is properly reflected.

Patentees are given **THIRTY (30) DAYS or ONE (1) MONTH, whichever is longer,** from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The Office acknowledges the submission of the required fee a set forth in 37 CFR 1.18(f).

Telephone inquiries specific to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/545,143	10/10/2006	David Dubiel	OPTPRO P03AUS	9508

7590 10/13/2010

Daniels Patent Law PLLC
43 Centre Street
Concord, NH 03301

EXAMINER	
HUYNH, KHOA D	

ART UNIT	PAPER NUMBER
3751	

MAIL DATE	DELIVERY MODE
10/13/2010	PAPER

DECISION GRANTING PETITION UNDER 37 CFR 1.138(d)

The declaration of express abandonment is recognized

This is in response to the petition under 37 CFR 1.138(d), requesting for a refund of any previously paid search fee and excess claims fee in the above-identified application.

The petition is granted.

The express abandonment is recognized. Any previously paid search fee and excess claims fee are hereby refunded.

Telephone inquiries should be directed to the Office of Data Management at (571) 272-4200.

Patent Publication Branch
Office of Data Management

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Decision Date : March 21, 2012

In re Application of :

Atish Chowdhury

Application No : 11545149

Filed : 10-Oct-2006

Attorney Docket No : H00011316 (P06,0130)

DECISION ON PETITION

UNDER CFR 1.137(b)

This is an electronic decision on the petition under 37 CFR 1.137(b), filed March 21, 2012 , to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to reply in a timely manner to the Notice of Allowance and Issue Fee(s) Due. The date of abandonment is the day after the expiration date of the period set for reply in the Notice.

The electronic petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of payment of the Issue Fee and the Publication Fee (if necessary); (2) the petition fee as set forth in 37 CFR 1.17 (m); (3) the drawing correction and/or other deficiencies (if necessary); and (4) the required statement of unintentional delay have been received. Accordingly, the Issue Fee payment is accepted as having been unintentionally delayed.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

Telephone inquiries concerning this decision should be directed to the Patent Electronic Business Center (EBC) at 866-217-9197.

This application file is being directed to the Office of Data Management.

Office of Petitions

Doc Code: PET.AUTO Document Description: Petition automatically granted by EFS-Web	PTO/SB/64 U.S. Patent and Trademark Office Department of Commerce

Electronic Petition Request	PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)
Application Number	11545149
Filing Date	10-Oct-2006
First Named Inventor	Atish Chowdhury
Art Unit	2431
Examiner Name	CHRISTOPHER REVAK
Attorney Docket Number	H00011316 (P06,0130)
Title	DECENTRALIZED ACCESS CONTROL FRAMEWORK

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus any extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:
(1) Petition fee;
(2) Reply and/or issue fee;
(3) Terminal disclaimer with disclaimer fee – required for all utility and plant applications filed before June 8, 1995; and for all design applications;
(4) Statement that the entire delay was unintentional.

Petition fee
The petition fee under 37CFR 1.17(m) is attached.

☐ Applicant claims SMALL ENTITY status. See 37 CFR 1.27.

☐ Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

☐ Applicant(s) status remains as SMALL ENTITY.

☒ Applicant(s) status remains as other than SMALL ENTITY.

Issue Fee and Publication Fee :

Issue Fee and Publication Fee must accompany ePetition.

☒ Issue Fee Transmittal is attached

Drawing corrections and/ or other deficiencies.

◉ Drawing corrections and/ or other deficiencies are not required

○ I certify, in accordance with 37 CFR 1.4.(D)(4), that drawing corrections and/ or other deficiencies have previously been filed on

○ Drawing corrections and/ or other deficiencies are attached.

☒ STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional.

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

I certify, in accordance with 37 CFR 1.4(d)(4) that I am:

○ An attorney or agent registered to practice before the Patent and Trademark Office who has been given power of attorney in this application.

◉ An attorney or agent registered to practice before the Patent and Trademark Office, acting in a representative capacity.

○ A sole inventor

○ A joint inventor; I certify that I am authorized to sign this submission on behalf of all of the inventors.

○ A joint inventor; all of whom are signing this e-petition.

○ The assignee of record of the entire interest that has properly made itself of record pursuant to 37 CFR 3.71.

Signature	/Eric T. Krischke/
Name	Eric T. Krischke
Registration Number	42769

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FISH & RICHARDSON PC
PO BOX 1022
MINNEAPOLIS MN 55440-1022

MAILED
DEC 22 2011
OFFICE OF PETITIONS

In re Patent No. 8,036,215	: DECISION ON
Kumarasamy, et al.	: REQUEST FOR RECONSIDERATION
Application No. 11/545,208	: of PATENT TERM ADJUSTMENT
Issue Date: October 11, 2011	:
Filed: October 10, 2006	:
Attorney Docket No. 26310-0213001	:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(d)", filed December 12, 2011, requesting that the patent term adjustment indicated on the above-identified patent be corrected from five hundred twenty-nine (529) days to six hundred fifty-five (655) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **DISMISSED.**

On October 11, 2011, the instant application matured into U.S. Patent No. 8,036,215 with a patent term adjustment of five hundred twenty-nine (529) days. The Office determined a patent term adjustment of 529 days based upon 469 days of "A" delay and 102 days of "B" delay, reduced by 31 days of Applicant delay and 11 days of overlap between "A" and "B" delay.

Petitioner argues that even though he filed an RCE on January 21, 2010, he should be awarded 37 CFR 1.703(b) "over three year" delay from the time the Office mailed a Notice of Allowance on June 8, 2011 until the issue date of the patent. In other words, Petitioner argue that no continued examination took place during this time period, and the Office should be accorded 126 additional days of delay pursuant to 37 CFR 1.703(b). Petitioner's argument has been considered, but is not persuasive.

RELEVANT STATUTE AND REGULATIONS

The statutory basis for calculation of "B delay" is 35 U.S.C. 154(b)(1)(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, which provides that:

Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including —

> (i) any time consumed by continued examination of the application requested by the applicant under section 132(b);
>
> (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or
>
> (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued.

The implementing regulation, 37 CFR 1.702(b) provides that:

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including:

> (1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b);
> (2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a);
> (3) Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181;
> (4) Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or
> (5) Any delay in the processing of the application by the Office that was requested by the applicant.

OPINION

Petitioner's arguments have been considered, but not found persuasive. The Office calculated the period of "B delay" pursuant to 37 CFR 1.702(b)(1) as 102 days based on the application having been filed on October 10, 2006, and a request for continued examination under 132(b) having been filed on January 21, 2010. In other words, the 126 day period beginning on the date

of mailing of the notice of allowance on June 8, 2011 to the date of issuance of the patent was considered time consumed by continued examination of an application under 35 U.S.C. 132(b) and was not included in the "B delay".

The Office's calculation of "B delay" is correct. The "B delay" is an adjustment entered if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed. However, the adjustment does not include, among other things, any time consumed by continued examination of the application at the request of the applicant under 35 U.S.C. 132(b)[1]. So, with respect to calculating the "B delay" where applicant has filed a request for continued examination, the period of adjustment is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the number of days in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

Further, counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Petitioner does not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is not any time consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56366, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

---

[1] Pursuant to 35 U.S.C. 132(b) , 37 CFR 1.114 provides for continued examination of an application, as follows:

(a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:

(1) Payment of the issue fee, unless a petition under § 1.313 is granted;

(2) Abandonment of the application; or

(3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

(b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

Petitioner's argument that the period of time after the issuance of a notice of allowance on a request for continued examination is not "any time consumed by continued examination requested by the applicant under section 132(b)" within the meaning of 35 U.S.C. 154(b)(1)(B)(i) is not availing. This limitation is not supported by the statutory language. Garcia v. United States, 469 U.S. 70, 75 (1984) ("only the most extraordinary showing of contrary intentions from [legislative history] would justify a limitation on the 'plain meaning' of the statutory language"). BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning"). The statute provides for a guarantee of no more than 3-year application pendency, by providing for an adjustment in the patent term:

First, "Subject to the limitations of paragraph (2)," means that the limitations of paragraph 2 apply to this paragraph's adjustment of patent term. That is, the day-to-day extension of patent term for pendency beyond the 3 year period is restricted as follows: 1) "B delay" cannot accrue for days of "A delay" that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

Second, "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of the United States) after the application filing date before an adjustment will accrue for "B delay."

Third, "not including- (i) any time consumed by continued examination of the application requested by the applicant under section 132(b); (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), meaning that the three-year period does not include "any time consumed by" or "any delay in processing," as specified in clauses (i)-(iii). This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, (580 F. Supp. 2d 138), because the clock for calculating the 20-year patent term begins to run on the filing date,

and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate this effect, the statute, *inter alia*, grants adjustments of patent term whenever the patent prosecution takes more than three years, regardless of the reason. The time consumed by prosecution of the application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. The time it takes to prosecute the application ends not with the mailing of the notice of allowance, but with the issuance of the patent.

Thus, not including "any time consumed by" means not including any days used to prosecute the application as specified in clauses (i)-(ii)[2]. Clause (i) specifies "any time consumed by continued examination of the application requested by the applicant under section 132(b)." Clause (ii) specifies "any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court." "Time" in the context of this legislation throughout refers to days. "Consumed by" means used by or used in the course of. Websters Collegiate Dictionary, (11th ed.). The "any" signifies that the days consumed by are "any" of the days in the pendency of the application, and not just days that occur after the application has been pending for 3 years. As such, "any time consumed by" refers to any days used in the course of 1) continued examination of the application under section 132(b)(the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, and 4) appellate review. Thus, that 3-year period given to the Office to issue a patent before an adjustment will accrue for "B delay" does not include any days used in the course of or any time consumed by clauses (i)-(ii), including any time consumed by the filing of a request for continued examination.

Fourth, "the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued" meaning that the consequence of this failure is that after "the end of that 3-year period" an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR

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[2] Clause (iii) provides for not including (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued. It is noted that paragraph (3)(C) allows with an adequate showing by applicant for reinstatement of no more than 3 months of the patent term reduced for applicant delay in taking in excess of three months to respond.

1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the law. See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the isuance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in Blacklight Power, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. See BlackLight Power, Inc. v. Rogan, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously been issued for the application. See In re Drawbaugh, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the

amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures[3] permit the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See 37 CFR 1.114(a)(1).

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the notice of allowance. All the time the application is pending from the date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that request. Applicant has gotten further prosecution of the application without having to file a continuing application under 37 CFR 1.53(b).

All of the continued examination pursuant to the filing of the request by the applicant is properly excluded from the delay attributed to the Office. 35 U.S.C. 154(b)(1)(B)'s guarantee of a total application pendency of no more than three years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

In this instance, a request for continued examination was filed on January 21, 2010, and the patent issued by virtue of that request on October 11, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on January 21, 2010 and ending on October 11, 2011 is not included in calculating Office delay.

CONCLUSION

In view thereof, it is concluded that the patent term adjustment of 529 days indicated on the patent is correct.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3207.

Cliff Congo
Petitions Attorney
Office of Petitions

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[3] Thus, on occasion, even where a request for continued examination has already been filed and a notice of allowance issued pursuant to that request, applicant may file a further request for continued examination.

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ADAM R. STEPHENSON, ESQ.
60 E. RIO SALADO PKWY
9TH FLOOR
TEMPE, AZ 85281

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SEP 14 2010

OFFICE OF PETITIONS

In re Application of
Steven C. Elsner
Application No. 11/545,210
Filed: October 10, 2006
Attorney Docket No.

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent under 37 C.F.R. § 1.36(b) filed August 5, 2010.

The request is **NOT APPROVED**.

The Office will no longer approve requests from practitioners to withdraw from application where the requesting practitioners is acting, or has acted, in a representative capacity pursuant to 37 CFR 1.34. In these situations, the practitioner is responsible for the correspondence the practitioner files in the application while acting in a representative capacity. As such, there is no need for the practitioner to obtain the Office's permission to withdraw from representation. However, practitioners acting in a representative capacity, like practitioners who have power of attorney in the application, remain responsible for noncompliance with 37 CFR 1.56, as well as 37 CFR 10.18, with respect to the documents they file.

A review of the file record indicates that Adam R. Stephenson, Esq. does not have power of attorney in this patent application. See 37 C.F.R. § 10.40. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is not applicable.

Petitioner should also note that the Office will no longer accept address changes to a new practitioner of law firm filed with a Request, absent the filing of a power of attorney to the new representative. The Office will either change the correspondence address of record to the most current address information provided for the assignee of the entire interest who properly became of record under 37 CFR 3.71 or, the most current address information provided for the first named inventor.

All future communications from the Office will continue to be directed to the address of record until otherwise properly notified by the applicant.

Telephone inquires concerning this decision should be directed to undersigned at 571-272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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JULIE MCCONIHAY
The Procter & Gamble Company
Beckett Ridge Technical Center
8611 Beckett Road
West Chester OH 45069

MAILED

MAR 14 2011

OFFICE OF PETITIONS

In re Application of	:	
Noda et al.	:	
Application No. 11/545264	:	
Filing or 371(c) Date: 10/10/2006	:	ON PETITION
Attorney Docket Number:	:	
10165M	:	

This is a decision on the petition under 37 CFR 1.137(b), filed December 16, 2010, to revive the above-identified application.

This Petition is hereby **granted**.

The above-identified application became abandoned for failure to timely and properly reply to the non-final Office action, mailed April 27, 2009. The Office action set a three (3) month period for reply from the mail date of the Office action. Extensions of time were available under 37 CFR 1.136(a). No reply having been received, the application became abandoned on July 28, 2009. A Notice of Abandonment was mailed December 16, 2009.

Applicant files the present petition and includes an Amendment in response to the Office action. The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an Amendment is filed with the present petition; (2) the petition fee; and (3) the required statement of unintentional delay. Accordingly, the reply is accepted as having been unintentionally delayed.

The application is being referred to Technology Center Art Unit 1796 for processing of the Amendment filed with the petition in due course.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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MORRISON & FOERSTER LLP
755 PAGE MILL RD
PALO ALTO, CA 94304-1018

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DEC 07 2010

OFFICE OF PETITIONS

In re Application of	:	
Bruce D. Modesitt	:	
Application No. 11/545,272	:	DECISION ON PETITION
Filed: October 6, 2006	:	TO WITHDRAW
Attorney Docket No. 602572000102	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed October 14, 2010.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others.

The request was signed by Mika Mayer on behalf of all attorneys of record who are associated with customer No. 25226. All attorneys/agents associated with the Customer Number 25226 have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

The correspondence address of record has been changed and the new correspondence address is the address indicated below.

There is an outstanding Office action mailed June 23, 2010 that requires a reply from the applicant.

Telephone inquiries concerning this decision should be directed to undersigned at 571-272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

cc: ARSTASIS, INC.
1021 HOWARD AVENUE
SUITE C
SAN CARLOS, CA 94070

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/545,272	10/06/2006	D. Bruce Modesitt	602572000102

CONFIRMATION NO. 3078

POWER OF ATTORNEY NOTICE

25226
MORRISON & FOERSTER LLP
755 PAGE MILL RD
PALO ALTO, CA 94304-1018

OC000000044831525

Date Mailed: 12/07/2010

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 10/14/2010.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

/amwise/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

UNITED STATES PATENT AND TRADEMARK OFFICE

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July 6, 2011

WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP
1250 CONNECTICUT AVENUE, NW
SUITE 700
WASHINGTON DC 20036

In re Application of	:	
Nagal, Kouichi	:	**DECISION ON PETITION**
Application No. 11/545,534	:	
Filed: 10/11/2006	:	***ACCEPTANCE OF COLOR***
Attorney Docket No. 063099	:	***DRAWINGS***

This is a decision on the Petition to Accept Color Drawings under 37 C.F.R 1.84 (a) (2), received in the United States Patent and Trademark Office (USPTO) December 06, 2006.

The petition is **GRANTED**.

A grantable petition under 37 C.F.R. 1.84(a) (2) must be accompanied by the following.

1. The fee set forth under 37 C.F.R. 1.17(h),
2. Three (3) sets of the color drawings in question, or (1) set if filed via EFS, and
3. The specification contains appropriate language referring to the color drawings as the first paragraph in that portion of the specification relating to the brief description of the drawings.

The petition was accompanied by all of the required fees and drawings. The specification contains the appropriate language. Therefore, the petition is GRANTED.

Telephone inquires relating to this decision may be directed to the undersigned in the Office of Data Management at 571-272-4200.

/Diane Terry/
Quality Control Specialist
Office of Data Management
Publications Branch

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 11/15/10

TO SPE OF : ART UNIT 1626

SUBJECT : Request for Certificate of Correction for Appl. No.: 11545584 Patent No.: 7338947

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (C of C)
Randolph Square 9D40-D
Palm Location 7580

You can fax the Directors/SPE response to 571-270-9990

Lamonte Newsome
Certificates of Correction Branch
571-272-3421

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

XApproved	**All** changes apply.
☐ **Approved in Part**	Specify below which changes **do not** apply.
☐ **Denied**	State the reasons for denial below.

Comments: _____

_____

_____

_____

_____

/Joseph K. McKane/ Art Unit 1626_____

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

SPE

Art Unit

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JUN 06 2011

OFFICE OF PETITIONS

In re Application of :
Morris et al. : DECISION ON PETITION
Application No. 11/545,765 :
Filed: October 10, 2006 :
Atty Docket No. 15717ROUS04C :
(NORT10-0054 :

This is a decision on the PETITION TO WITHDRAW HOLDING OF ABANDONMENT filed April 28, 2011.

The petition is **GRANTED**.

By Notice of Abandonment mailed March 9, 2011, applicant was advised that the above-identified application had become abandoned for failure to file a reply to the final Office action mailed March 25, 2010. The Office action set a three (3) month shortened statutory period for reply, with extensions of time obtainable under §1.136(a). A reply was timely filed on May 25, 2010. However, the reply, a terminal disclaimer, was disapproved by the examiner on the basis that no 3.73(b) statement was of record. A further terminal disclaimer was filed on September 15, 2010, along with a 3.73(b) statement. No petition for extension of time accompanied this reply and no extension of time was considered to be generally authorized. Thus, this reply was not timely filed. (Nonetheless, the terminal disclaimer filed September 15, 2010 was approved).

On instant petition, applicant requests withdrawal of the holding of abandonment. Applicant argues that the terminal disclaimer filed May 25, 2010 constituted a timely and proper reply to the final Office action. Applicant contends that the terminal disclaimer was signed by the attorney of record and as such, no 3.73(b) statement was required.

Applicant's argument has been considered, and found persuasive that withdrawal of the holding of abandonment is warranted. The terminal disclaimer filed May 25, 2010 was a timely and proper reply to the final Office action mailed March 25, 2010. As stated in MPEP 1490:

For a disclaimer to be accepted, it must be signed by the proper party as follows:

> (A) A disclaimer filed in an application must be signed by
> (1) the applicant where the application has not been assigned,
> (2) the applicant and the assignee where each owns a part interest in the application,
> (3) the assignee where assignee owns the entire interest in the application, or
> (4) an attorney or agent of record.

The terminal disclaimer filed May 25, 2010 was signed by Robert D. McCutcheon as attorney or agent of record. His signature included his registration number. Both the record and applicant's statements on petition support a conclusion that at the time of filing (and presently), Robert D. McCutcheon is an attorney or agent of record. Accordingly, the terminal disclaimer filed May 25, 2010 should have been accepted. No 3.73(b) statement was required.

In view thereof, the holding of abandonment is hereby **WITHDRAWN**.

No fee is required on petition under § 1.181.

Technology Center AU 2611 has been advised of this decision. The application is, thereby, forwarded to the Technology Center's technical support staff to withdraw the holding of abandonment and to take further action in light of the timely filing on May 25, 2010 of the terminal disclaimer in response to the final Office action.

Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Doc Code: PET.PTA.RCAL
Document Description: Request for Recalculation in view of Wyeth

PTO/SB/131 (01-10)
Approved for use through 02/28/2011. OMB 0651-0020
U.S. Patent and Trademark Office; U. S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF *WYETH**

Attorney Docket Number: LEEK3022/JJC	Patent Number: 7667957
Filing Date (or 371(b) or (f) Date): 2006-10-11	Issue Date: 2010-02-23
First Named Inventor: Kun-Sheng Lee	
Title: THIN-TYPE DISPLAY	

PATENTEE HEREBY REQUESTS RECALCULATION OF THE PATENT TERM ADJUSTMENT (PTA) UNDER 35 USC 154(b) INDICATED ON THE ABOVE-IDENTIFIED PATENT. THE PATENTEE'S SOLE BASIS FOR REQUESTING THE RECALCULATION IS THE USPTO'S PRE-*WYETH* INTERPRETATION OF 35 U.S.C. 154(b)(2)(A).

Note: This form is only for requesting a recalculation of PTA for patents issued before March 2, 2010, if the sole basis for requesting the recalculation is the USPTO's pre-*Wyeth* interpretation of 35 U.S.C. 154(b)(2)(A). See Instruction Sheet on page 2 for more information.

Patentees are reminded that to preserve the right to review in the United States District Court for the District of Columbia of the USPTO's patent term adjustment determination, a patentee must ensure that he or she also takes the steps required under 35 U.S.C. 154(b)(3) and (b)(4) and 37 CFR 1.705 in a timely manner.

**Wyeth v. Kappos*, No. 2009-1120 (Fed. Cir., Jan. 7, 2010).

Signature /ThomasJMoore/	Date 2010-08-20
Name (Print/Typed) Thomas J. Moore	Registration Number 28974

Note: *Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required in accordance with 37 CFR 1.33 and 11.18. Please see 37 CFR 1.4(d) for the form of the signature. If necessary, submit multiple forms for more than one signature, see below**.

☐ *Total of _____ forms are submitted.

The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

PTO/SB/131 (01-10)
Approved for use through 02/28/2011. OMB 0651-0020
U.S. Patent and Trademark Office; U. S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

Instruction Sheet for:
REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF *WYETH**

(Not to be Submitted to the USPTO)

This form is only for requesting a recalculation of PTA for patents issued before March 2, 2010, if the sole basis for requesting the recalculation is the USPTO's pre-*Wyeth* interpretation of 35 U.S.C. 154(b)(2)(A).

This form must be filed within 180 days of the day the patent was granted, with the following exception:

> Patentees who received a decision from the USPTO under the USPTO's pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A) may file a request for reconsideration of that decision if such a request for reconsideration is filed within **two months** of the date of the decision (37 CFR 1.181(f)). If the patentee's sole basis for requesting reconsideration of the decision is the USPTO's pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A), the request for reconsideration need only state that reconsideration is being requested in view of Wyeth (this form may be used for this purpose if it is filed within **two months** of the date of the decision from the USPTO).

Do not use this form if the application has been allowed, but not yet issued as a patent.

1. **For patents issued before March 2, 2010:** A request for reconsideration under 37 CFR 1.705(d) and the fee set forth in 37 CFR 1.18(e) are not required, provided that the patentee's sole basis for requesting recalculation of the PTA in the patent is the USPTO's pre-*Wyeth* interpretation of 35 U.S.C. 154(b)(2)(A) and this form is filed within 180 days of the day the patent was granted.

2. **For patents issued on or after March 2, 2010 (do not use this form):** Patentees seeking a revised PTA in a patent issued on or after March 2, 2010, must file a request for reconsideration under 37 CFR 1.705(d) that complies with the requirements of 37 CFR 1.705(b)(1) and (b)(2) within two months of the day the patent issued.

For more information, see "Notice Concerning Calculation of the Patent Term Adjustment With Respect to the Overlapping Delay Provision of 35 U.S.C. 154(b)(2)(A)" available on the USPTO Web site at http://www.uspto.gov/patents/law/notices/2010.jsp.

**Wyeth v. Kappos*, No. 2009-1120 (Fed. Cir., Jan. 7, 2010).

Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

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BACON & THOMAS, PLLC
625 SLATERS LANE
FOURTH FLOOR
ALEXANDRIA, VA 22314-1176

Mail Date: 09/14/2010

Applicant	: Kun-Sheng Lee	: DECISION ON REQUEST FOR
Patent Number	: 7667957	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/545,775	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 10/11/2006	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **448** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

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NOV 17 2010

OFFICE OF PETITIONS

NIXON & VANDERHYE, PC
901 NORTH GLEBE ROAD, 11TH FLOOR
ARLINGTON VA 22203

In re Application of	:	
Skarby et al.	:	DECISION ON PETITION
Application No. 11/545,782	:	TO WITHDRAW
Filed: October 11, 2006	:	FROM RECORD
Attorney Docket No. P21491-US2	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed October 12, 2010.

The request is **DISMISSED** as involving a moot issue.

A review of the file record indicates that the power of attorney to the attorneys/agents associated with Customer Number 27045 was revoked by the assignee of the patent application on October 26, 2010. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

All future communications from the Office will be directed to the below-listed address until otherwise properly notified.

Telephone inquires concerning this decision should be directed to the undersigned at 571-272-3206. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

Liana Walsh
Petitions Examiner
Office of Petitions

cc: ERICSSON INC.
6300 LEGACY DRIVE
M/S EVR 1-C-11
PLANO TX 75024

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United States Patent and Trademark Office
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/545,784	10/10/2006	Ashvani K. Madan	END5747USNP1	9391

27805 7590 11/09/2010

THOMPSON HINE L.L.P.
Intellectual Property Group
P.O. BOX 8801
DAYTON, OH 45401-8801

EXAMINER	
NGUYEN, TIN DUC	
ART UNIT	PAPER NUMBER
3731	
MAIL DATE	DELIVERY MODE
11/09/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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THOMPSON HINE L.L.P.
Intellectual Property Group
P.O. BOX 8801
DAYTON OH 45401-8801

In re Application of:
MADAN, ASHVANI K. et al
Serial No. 11/545,784
Filed: Oct. 10, 2006
Docket: END5747USNP1
Title: MEDICAL ULTRASOUND SYSTEM AND HANDPIECE AND METHODS FOR MAKING AND TUNING

DECISION ON PETITION UNDER 37 CFR § 1.144

This is a decision on the petition filed October 19, 2010 under 37 CFR § 1.144 requesting withdrawal of restriction requirement with respect to claims 1, 22-23 and 26-27. This petition is being considered pursuant to 37 CFR § 1.144 and 37 CFR § 1.181, and no fee is required.

The petition is dismissed as moot.

A review of the non-final Office action of October 6, 2010 reveals that claims 1, 22-23 and 26-27 already have been examined on the merits and rejected as unpatentable over *Vaitekunas* (U.S. Patent No. 5,630,420) in view of *Ureche* (U.S. Patent No. 5,112,300) along with claims 2 - 8, 10-11, 14-21 under 35 U.S.C. 103(a) (see Paragraphs 2-5 of the Office action of October 6, 2010). On lines 13-18 of page 9 of the election filed on July 6, 2010, the applicant has correctly pointed out upon allowance of generic claim(s), non-elected claims will be rejoined and allowed (also see Paragraph 8 of the Office action June 3, 2010). In view of the examiner's action of October 6, 2010, decision on the petition is moot and subject to dismissal.

The application is being forwarded to the examiner via the Supervisory Patent Examiner of Art Unit 3731 awaiting the applicant's response to the outstanding Office action of October 6, 2010. The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings (37 CFR § 1.181(f)).

Any inquiry regarding this decision should be directed to Henry C. Yuen, Special Programs Examiner, at (571) 272-4856.

PETITION DISMISSED.

Angela D. Sykes, Director
Technology Center 3700

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THE WATSON INTELLECTUAL PROPERTY GROUP, PLC
3133 HIGHLAND DRIVE
SUITE 200
HUDSONVILLE MI 49426

MAILED
MAR 15 2011
OFFICE OF PETITIONS

In re Application of :
Raley, et al. : DECISION ON PETITION
Application No. 11/545,809 :
Filed: October 10, 2006 :
Atty. Dkt. No.: DRO-051200 :

This is a decision on the petition under 37 CFR 1.137(b), filed February 9, 2011, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is not a final agency decision.

This application became abandoned August 15, 2010 for failure to timely reply to the Notice of Allowance ("Notice") mailed May 14, 2010. The Notice set a three month statutory period of time for reply. Notice of Abandonment was mailed September 1, 2010.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17; (3) the required statement of unintentional delay; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

The present petition fails to satisfy requirement (1) set forth above. The Notice required the submission of a new oath or declaration. Petitions have submitted a declaration newly signed by inventor March. However, petitioners have failed to submit an oath or declaration newly signed by the remaining joint inventors.

Any request for reconsideration must include a newly executed oath or declaration signed by all joint inventors.

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450

Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

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THE WATSON INTELLECTUAL PROPERTY GROUP, PLC
3133 HIGHLAND DRIVE
SUITE 200
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MAILED
JUN 06 2011
OFFICE OF PETITIONS

In re Application of :
Raley, et al. : DECISION ON PETITION
Application No. 11/545,809 :
Filed: October 10, 2006 :
Atty. Dkt. No.: DRO-051200 :

This is a decision on the renewed petition under 37 CFR 1.137(b), filed May 13, 2011, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned August 15, 2010 for failure to timely reply to the Notice of Allowance ("Notice") mailed May 14, 2010. The Notice set a three month statutory period of time for reply. Notice of Abandonment was mailed September 1, 2010. A petition under 37 CFFR 1.137(b) was filed February 9, 2011 and dismissed March 15, 2011.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17; (3) the required statement of unintentional delay; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

The instant petition has been carefully reviewed and found in compliance with the provisions set forth above.

This application is being directed to the Office of Data Management for further consideration.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

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TRIANGLE PATENTS, PLLC
P.O. BOX 28539
RALEIGH, NC 27611-8539

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NOV 04 2010

OFFICE OF PETITIONS

In re Application of
Philip D. Buchanan
Application No. 11/545,827
Filed: October 11, 2006
Attorney Docket No. 4007-001

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the renewed Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed September 21, 2010.

The request is **NOT APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others.

Petitioner should note that the Office will no longer accept address changes to a new practitioner of law firm filed with a Request, absent the filing of a power of attorney to the new representative. The Office will either change the correspondence address of record to the most current address information provided for the assignee of the entire interest who properly became of record under 37 CFR 3.71 or, the most current address information provided for the first named inventor.

Accordingly, the request to withdraw from record does not include an acceptable current correspondence address for future communications from the Office.

In order to request or take action in a patent matter, the assignee must establish its ownership of the patent to the satisfaction of the Director. In this regard, a Statement under 37 CFR 3.73(b) must have either: (i) documentary evidence of a chain of title from the original owner to the assignee (e.g., copy of an executed assignment), and a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was or concurrently is being submitted for recordation pursuant to § 3.11; or (ii) a statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (e.g., reel and frame number). Since the statement filed 37 CFR 3.73(b)

does not include a proper application number and filing date the statement is considered improper.

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

Telephone inquiries concerning this decision should be directed to undersigned at 571-272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

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FOLEY HOAG, LLP (W/ISA)
PATENT GROUP
155 SEAPORT BLVD.
BOSTON, MA 02210-2600

MAILED

FEB 28 2011

OFFICE OF PETITIONS

In re Application of :
Philip D. Buchanan :
Application No. 11/545,827 : ON PETITION
Filed: October 11, 2006 :
Attorney Docket No. METHODS OF CHROMOSOME DRYING AND SPREADING

This is a decision on the petition, filed February 28, 2011 under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on January 18, 2011 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to Irvin Dingle at (571) 272-3210.

This matter is being referred to Technology Center AU 1634 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

/Irvin Dingle/
Irvin Dingle
Petitions Examiner
Office of Petitions

[1] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above. Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

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DARIN DESILETS
1316 WELLESLEY DRIVE NE
ALBUQUERQUE NM 87106

MAILED

JUN 20 2011

OFFICE OF PETITIONS

In re Application of
Darin Desilets
Application No. 11/545,851
Filed: October 11, 2006
For: NON-INVASIVE AND PASSIVE METHOD FOR MEASURING SOIL WATER CONTENT AND SNOW WATER EQUIVALENT DEPTH USING COSMIC-RAY NEUTRONS

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 15, 2011 to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an amendment; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the nonfinal Office action mailed June 21, 2010, is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.

This application is being referred to Technology Center AU 2884 for appropriate action by the Examiner in the normal course of business.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

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DIW Jun-11

DARIN DESILETS
1316 WELLESLEY DRIVE NE
ALBUQUERQUE NM 87106

MAILED
JUN 20 2011
OFFICE OF PETITIONS

In re Application of	
Darin Desilets	
Application No. 11/545,851	
Filed: October 11, 2006	
For: NON-INVASIVE AND PASSIVE METHOD FOR MEASURING SOIL WATER CONTENT AND SNOW WATER EQUIVALENT DEPTH USING COSMIC-RAY NEUTRONS	DECISION ON PETITION

This is a decision on the renewed request to correct inventorship under 37 CFR 1.48(a), filed on July 13, 2010.

The petition is **granted**.

If the inventive entity is set forth in error in an executed § 1.63 oath or declaration in a nonprovisional application, and such error arose without any deceptive intention on the part of the person named as an inventor in error or on the part of the person who through error was not named as an inventor, the inventorship of the nonprovisional application may be amended to name only the actual inventor or inventors. Amendment of the inventorship requires:

(1) A request to correct the inventorship that sets forth the desired inventorship change;

(2) A statement from each person being added as an inventor and from each person being deleted as an inventor that the error in inventorship occurred without deceptive intention on his or her part;

(3) An oath or declaration by the actual inventor or inventors as required by § 1.63 or as permitted by §§ 1.42, 1.43 or § 1.47;

(4) The processing fee set forth in § 1.17(i); and

(5) If an assignment has been executed by any of the original named inventors, the written consent of the assignee (see § 3.73(b) of this chapter).

In view of the above, the inventorship is amended by the deletion of Marek Zreda.

A corrected Filing Receipt is enclosed for petitioners' records.

Telephone inquiries concerning this matter may be directed to the undersigned at(571) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

Cf: Corrected Filing Receipt

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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
11/545,851	10/11/2006	2884	500		1	1

CONFIRMATION NO. 2267

CORRECTED FILING RECEIPT

Darin Desilets
1316 Wellesley Drive NE
Albuquerque, NM 87106

OC00000048226713

Date Mailed: 06/15/2011

Receipt is acknowledged of this non-provisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections**

Applicant(s)

Darin Desilets, Tucson, AZ;

Power of Attorney: None

Domestic Priority data as claimed by applicant

Foreign Applications (You may be eligible to benefit from the **Patent Prosecution Highway** program at the USPTO. Please see http://www.uspto.gov for more information.)

If Required, Foreign Filing License Granted: 11/03/2006

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/545,851**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No
**** SMALL ENTITY ****

Title

Non-invasive and passive method for measuring soil water content and snow water equivalent depth using cosmic-ray neutrons

Preliminary Class

250

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at http://www.uspto.gov/web/offices/pac/doc/general/index.html.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, http://www.stopfakes.gov. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where

the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

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John Alumit
16830 Ventura Blvd. Suite 360
Encino CA 91364

MAILED

OCT 26 2011

OFFICE OF PETITIONS

In re Application of :
Christine Frances Carlton :
Application No. 11/545,854 : DECISION ON PETITION
Filed: October 3, 2006 :
Attorney Docket No. **22625-001** :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 30, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of March 27, 2008. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is June 28, 2008.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment; (2) the petition fee of $930; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the JoAnne Burke at (571)272-4584.

This application is being referred to Technology Center AU 3673 for appropriate action by the Examiner in the normal course of business.

JoAnne Burke
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Kilpatrick Townsend &
Stockton LLP
Adobe Systems, Inc. 58083
1100 Peachtree Street
Suite 2800
Atlanta GA 30309-4530

MAILED

JUN 17 2011

OFFICE OF PETITIONS

In re Application of :
JARAMILLO et al. : DECISION ON APPLICATION
Application No. 11/546,004 : FOR
Filed: 10/10/2006 : PATENT TERM ADJUSTMENT
Atty Docket No. 58083-375203 (B311):

This is in response to the "Communication Regarding Patent Term Adjustment (PTA) Indicated in Notice of Allowance" filed June 6, 2011, which is properly treated as a petition under 37 CFR 1.705(b). Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from seven hundred seventy-one (771) days to seven hundred seventy-four (774) days.

The request reconsideration of the patent term adjustment at the time of the mailing of the notice of allowance is **DISMISSED**.

Applicants request the removal of the period of reduction under 37 CFR 1.704(b) of 3 days on the ground that the response to the Office action mailed July 9, 2010, was filed timely on October 12, 2010. Applicants assert that the three (3) month shortened statutory period for response to the Office action of July 9, 2010, fell on Saturday, October 9, 2010. Additionally, applicants noted that October 10, 2010 was a Sunday and October 11, 2010 was a Federal Holiday. Therefore, applicants had until the next succeeding business day, October 12, 2010, to file a timely response.

Applicants' argument is without merit. Applicants were properly assessed a delay of 3 days for filing a response on October 12, 2010, to the Office action of July 9, 2010. Calculation of applicants' delay is based on the date of receipt of the response in the Office. 35 U.S.C. 154(b)(2)(C)(ii) does not require that a reply be filed in the Office within its three (3) month grace period, but simply specifies that there is a patent term adjustment reduction if a reply is not filed within this three (3) month period. Therefore, the "carry-over" provisions of 35 U.S.C. 21(b) does not apply to the three (3) month period in 35 U.S.C. 154(b)(2)(C)(ii). Accordingly, the period of reduction of 3 days will remain.

The Office acknowledges the $200.00 fee set forth in 37 CFR 1.18(e).

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicant will be notified of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to applicant approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3211.

/Christina Tartera Donnell/

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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HEWLETT-PACKARD COMPANY
INTELLECTUAL PROPERTY ADMINISTRATION
3404 E. HARMONY ROAD
MAIL STOP 35
FORT COLLINS CO 80528

MAILED
JUL 11 2011
OFFICE OF PETITIONS

In re Application of :
Andrew Byde et al. :
Application No. 11/546,042 : ON PETITION
Filed: October 11, 2006 :
Attorney Docket No: 200600318-1

This is a decision on the petition filed June 14, 2011 under 37 CFR 1.182, for withdrawal of the terminal disclaimer filed June 10, 2011.

The petition is **GRANTED**.

The examiner responsible for the above-identified application has indicated that the terminal disclaimer filed June 10, 2011 does not apply to any of the claims as currently amended. Accordingly, on petition the terminal disclaimer is withdrawn.

The petition fee in the amount of $400.00 is required for treatment of the petition under 37 CFR 1.182 and cannot be refunded. Accordingly, per the authorization included with the petition, $400.00 has been charged to deposit account no. 08-2025.

This matter is being referred to Technology Center 1621 to correct the records related to the terminal disclaimer filed June 10, 2011 consistent with this decision.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Bryan D. Wright
Suite 400
321 E. Main St.
Charlottesville VA 22902

MAILED

AUG 11 2010

OFFICE OF PETITIONS

In re Application of
Bruce Paradiso
Application No. 11/546,046
Filed: October 11, 2006
Attorney Docket No. **042002.0001**

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 CFR § 1.36(b), filed July 2, 2010.

The request is **NOT APPROVED**.

The request cannot be approved because the requested change in the correspondence address is improper. The assignee name listed in the request is not of record.

The Office will only accept correspondence address changes to the most current address information provided for the assignee of the entire interest *who properly became of record under 37 CFR 3.71,* or, if no assignee of the entire interest has properly been made of record, the most current address information provided for the first named inventor. 37 CFR 3.71(c) states:

> *An assignee becomes of record either in a national patent application or a reexamination proceeding by filing a statement in compliance with § 3.73(b) that is signed by a party who is authorized to act on behalf of the assignee.*

The assignee must establish its ownership of the patent to the satisfaction of the Director. In this regard, the statement under 37 CFR 3.73(b) must have either: (i) documentary evidence of a chain of title from the original owner to the assignee (*e.g.*, copy of an executed assignment), and a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was or concurrently is being submitted for recordation pursuant to § 3.11; or (ii) a statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (*e.g.*, reel and frame number).

Therefore, as there is currently no Statement under 37 CFR 3.73(b) with the current assignee information of record in the instant application, the Office cannot change the correspondence address to the address on the Request to Withdraw at this present time.

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

Telephone inquiries concerning this decision should be directed to JoAnne Burke at 571-272-4584.

/JoAnne Burke/
JoAnne Burke
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 8/22/2011

TO SPE OF : ART UNIT 2112

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/546062 Patent No.: 7949925 B2

CofC mailroom date: 8/11/2011

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Note: _____

_____

Virginia Tolbert

Certificates of Correction Branch

(571) 272-0460

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

☒ **Approved**	All changes apply.
☐ **Approved in Part**	Specify below which changes **do not** apply.
☐ **Denied**	State the reasons for denial below.

Comments: _____

SCOTT BADERMAN
SUPERVISORY PATENT EXAMINER

SPE 2112 **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No.

BARNES & THORNBURG LLP
11 SOUTH MERIDIAN
INDIANAPOLIS IN 46204

MAILED

NOV 09 2010

OFFICE OF PETITIONS

In re Application of :
Leamon et al :
Application No. 11/546,099 :
Filed: 10/11/2006 :
Attorney Docket No. :
20150-200939 :

DECISION ON
APPLICATION FOR
PATENT TERM ADJUSTMENT

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)," filed on August 16, 2010. Applicants request that the determination of patent term adjustment at the mailing of the notice of allowance be increased by 41 days from 261 days to 302 days.

The application for patent term adjustment patent is **DISMISSED**.

Applicants are given **TWO (2) MONTHS** to respond to this decision. No extensions of time will be granted under § 1.136.

On May 21, 2010, the Office mailed a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. Applicant was advised that the patent term adjustment to date was 261 days (360 days of Office delay less 99 days of applicant delay). The subject application was timely filed on August 16, 2010.[1]

Applicants contend that there should have been no reduction in patent term adjustment for the filing of the Terminal Disclaimer filed on March 12, 2009, 41 days after a response was filed on April 1, 2009, because the Terminal Disclaimer was expressly requested by the examiner.

[1] A review of Office PALM records indicates that the issue fee was paid on August 16, 2010.

37 CFR 1.704(c)(8) provides that the filing of a supplemental reply, other than one expressly requested by the examiner, constitutes a failure to engage in reasonable efforts to conclude processing or examination. The Terminal Disclaimer was submitted 41 days after a response was filed. The showing of record does not support a finding, however, that the Terminal Disclaimer was expressly requested by the examiner. Accordingly, the reduction of 41 days is warranted and will not be removed.

It is further noted that the submission of a reply having an omission is a failure to engage within the meaning of 37 C.F.R. § 1.704(c)(7). Accordingly, if the Terminal Disclaimer filed on May 12, 2009, was filed to correct an omission in the response filed on April 1, 2009, then 37 C.F.R. § 1.704(c)(7) would serve as a proper alternative basis for the reduction of 41 days.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Office of Data Management for issuance of a patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3231.

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 05/19/11

TO SPE OF : ART UNIT: 2877 Attn: TOATLEY GREGORY J (SPE)

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/546119 Patent No.: 7636168

C of C Mailroom date: 02/09/10

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Tasneem Siddiqui
Certificates of Correction Branch
703-756-1593 or 703-756-1814

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- [X] **Approved** — **All** changes apply.
- [ ] **Approved in Part** — Specify below which changes **do not** apply.
- [ ] **Denied** — State the reasons for denial below.

Comments: Approved.

/Gregory J Toatley Jr/ AU 2877

SPE **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

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TESSARI PATENT LAW GROUP, PLLC
301 LINDENWOOD DRIVE - SUITE 206
MALVERN PA 19355

MAILED

MAY 17 2011

OFFICE OF PETITIONS

In re Application of :
James W. CREE et al. :
Application No. 11/546,151 : ON PETITION
Filed: October 11, 2006 :
Attorney Docket No. TRED55.DIV (334 US DIV1) :

This is a decision on the petition under 37 CFR 1.137(b), filed April 18, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed September 27, 2010, which set a shortened statutory period for reply of three (3) months. A three (3) month extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the above-identified application became abandoned on March 28, 2011.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an amendment, a Request for Continued Examination, and the $810 filing fee; (2) the petition fee of $1620; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the final Office Action of September 27, 2010 is accepted as having been unintentionally delayed.

37 CFR 1.137(b)(3) requires a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." Since the statement appearing in the petition varies from the language required by 37 CFR 1.137(b)(3), the statement is being construed as the required statement. Petitioner must notify the Office if this is not a correct reading of the statement appearing in the petition.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to

Patent Practice and Procedure; Final rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant of 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

Telephone inquiries concerning this decision should be directed to David A. Bucci at (571) 272-7099.

The application file is being referred to Technology Center AU 1744 for appropriate action on the concurrently filed Request for Continued Examination and amendment.

David A. Bucci
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 3/7/2011

TO SPE OF : ART UNIT 2193

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/546158 Patent No.: 7849121 B2

CofC mailroom date: 2/21/2011

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

_____
Certificates of Correction Branch
703-756-1814 _____

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

☒ **Approved**	**All** changes apply.
☐ **Approved in Part**	Specify below which changes **do not** apply.
☐ **Denied**	State the reasons for denial below.

Comments: _____

LEWIS A. BULLOCK JR.
SUPERVISORY PATENT EXAMINER

SPE 2193 **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

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MAILED

OCT 22 2010

OFFICE OF PETITIONS

SEYMOUR ORLINSKY
6496 NW 31ST WAY
BOCA RATON FL 33496

In re Application of :
Orlinsky et al. :
Application No. 11/546,199 : ON PETITION
Filed: October 11, 2006 :
Attorney Docket No. P-2801 :

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed July 27, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Substitute Specification and Replacement Drawings, (2) the petition fee of $810.00, and (3) a proper statement of unintentional delay.

The Substitution of Attorney filed concurrently is hereby not accepted. All documents must be signed by:

(1) An attorney or agent of record appointed in compliance with § 1.34(b);

(2) A registered attorney or agent not of record who acts in a representative capacity under the provisions of § 1.34(a);

(3) The assignee of record of the entire interest, if there is an assignee of record of the entire interest;

(4) An assignee of record of an undivided part interest, and any assignee(s) of the remaining interest and any applicant retaining an interest, if there is an assignee of record of an undividing part interest; or

(5) All of the applicants (§§ 1.42. 1.43 and 1.47) for patent, unless there is an assignee of record of the entire interest and such assignee has taken action in the application in accordance with §§ 3.71 and 3.73.

Currently, only one of the four listed inventors has signed the new power of attorney. For it to be accepted, the signatures of the remaining three inventors are necessary. A courtesy copy of the decision will be mailed to the address on the petition; all future correspondence will be mailed to the above-listed address until properly notified.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3206.

This matter is being referred to the Office of Patent Application Processing for further pre-examination processing. Thereafter, the application will be referred to Technology Center AU 1761 for examination on the merits.

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

cc: PAUL A. FATTIBENE, ESQ.
FATTIBENE & FATTIBENE
2480 POST ROAD
SOUTHPORT, CT 06890

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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QUALCOMM INCORPORATED
5775 MOREHOUSE DR.
SAN DIEGO, CA 92121

MAILED

APR 18 2011

OFFICE OF PETITIONS

In re Application of :
James A. Proctor, Jr. et al :
Application No. 11/546,242 :
Filed: October 12, 2006 :
Attorney Docket No. NON-FREQUENCY TRANSLATING REPEATER WITH DOWNLINK DETECTION FOR UPLINK AND DOWNLINK SYNCHRONIZATION

ON PETITION

This is a decision on the petition, filed April 15, 2011 under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on February 14, 2011 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to Irvin Dingle at (571) 272-3210.

This matter is being referred to Technology Center AU 2618 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

/Irvin Dingle/
Irvin Dingle
Petitions Examiner
Office of Petitions

[1] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above. Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, VA 22313-1450
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GREENBLUM & BERNSTEIN, P.L.C.
1950 ROLAND CLARKE PLACE
RESTON VA 20191

MAILED

JUN 20 2011

OFFICE OF PETITIONS

In re Patent No. 7,943,255 :
Issued: May 17, 2011 :
Application No. 11/546,336 : ON PETITION
Filed: October 12, 2006 :
Attorney Docket Number: P30935 :

This is a decision on the petition, filed June 14, 2011, under 37 CFR 3.81(b)[1] to correct the assignee information on the front of the Patent.

The petition is **GRANTED**.

Petitioner states that the name of a second assignee was inadvertently not included on the Fee(s) Transmittal form PTOL-85(b) at the time of payment of the issue fee in the instant matter. Accordingly, petitioner requests that a certificate of correction be issued to reflect the names of PANASONIC CORPORATION, Osaka (JP) and TOYOTA JIDOSHA KABUSHIKI KAISHA, Aichi (JP)on the front page of the Letters Patent.

In view thereof, and since Office assignment records reflect that PANASONIC CORPORATION, Osaka (JP) and TOYOTA JIDOSHA KABUSHIKI KAISHA, Aichi (JP) are the assignees of record as the assignment was recorded with the parent application no. 10/754,420 the request complies with the provisions of 37 CFR 3.81(b) and it is therefore appropriate for a certificate of correction to issue.

The petition fee in the amount of $130.00 and the fee for the certificate of correction in the amount of $100 have been applied.

Inquiries concerning this decision should be directed to the undersigned at (571) 272-3212. Any questions concerning the issuance of a certificate of correction should be directed to the Certificates of Correction Branch at (703) 305-8309.

This file is being referred to the Certificates of Correction Branch for issuance of a certificate of correction.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

---

[1] *See* Official Gazette of June 22, 2004

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Alexandria, VA 22313-1450
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MAILED

OCT 01 2010

OFFICE OF PETITIONS

MORRISON & FOERSTER LLP
12531 HIGH BLUFF DRIVE, SUITE 100
SAN DIEGO, CA 92130-2040

In re Application of :

John I. GLASS, et *al.* :
Application No. 11/546,364 :
Filed: October 12, 2006 :
Attorney Docket No. **616872001800** :

DECISION ON PETITION TO WITHDRAW FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed September 3, 2010.

The request is **NOT APPROVED**.

The request to withdraw as attorney/agent of record and change of correspondence address is hereby not accepted. Petitioner has not complied with current USPTO requirements, set forth in 37 CFR 10.40 concerning Request for Withdrawal as Attorney and Change of Correspondence Address.

Petitioner has not properly submitted correspondence forwarding address information for the application.

The Office will only accept correspondence address changes to the most current address information provided for the assignee of the entire interest *who properly became of record under 37 CFR 3.71*, or if no assignee of the entire interest has properly been made of record, the most current address information provided for the first named inventor. 37 CFR 3.71 (c) states:

> ***An assignee becomes of record either in a national patent application or a reexamination proceeding by filing a statement in compliance with § 3.73 (b) that is signed by a party who is authorized to act on behalf of the assignee.***

In order to request or take action in a patent matter, the assignee must establish its ownership of the patent to the satisfaction of the Director. In this regard, a Statement under 37 CFR 3.73(b) must have either: (i) documentary evidence of a chain of title from the original owner to the assignee (*e.g.*, copy of an executed assignment), and a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was or concurrently is being submitted for recordation pursuant to § 3.11; or (ii) a statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (*e.g.*, reel and frame number).

All future communications from the Office will be directed to the above-listed address until otherwise properly notified by the applicant or a change of correspondence address containing a proper 3.73(b) statement has been submitted.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272- 7253.

All other inquires concerning either the examination or status of the application should be directed to the Technology Center at (571) 272-1600.

/Monica A. Graves/
Petitions Examiner, Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP
901 NEW YORK AVENUE, NW
WASHINGTON DC 20001-4413

MAILED
MAY 18 2011
OFFICE OF PETITIONS

In re Patent No. 7,906,556	: DECISION ON REQUEST
Neitz et al.	: FOR
Issue Date: 03/15/2011	: RECONSIDERATION OF
Application No. 11/546,453	: PATENT TERM ADJUSTMENT
Filed: 10/12/2006	: and
Atty Docket No.	: NOTICE OF INTENT TO ISSUE
09511.0015-00	: CERTIFICATE OF CORRECTION

This is a decision on the petition filed on April 5, 2011, under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by seven hundred twenty-one (721) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by seven hundred twenty-one (721) days is **GRANTED**.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The Office thanks patentees for their good faith and candor in bringing this to the attention of the Office.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **seven hundred twenty-one (721)** days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3231.

DWood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,906,556 B2

DATED : **Mar. 15, 2011** **DRAFT**

INVENTOR(S) : Neitz et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 629 days.

Delete the phrase "by 629 days" and insert – by 721 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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OFFICE OF PETITIONS

FISH & RICHARDSON P.C. (TC)
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MINNEAPOLIS MN 55440-1022

In re Patent No. 7,886,173 :
Issued: February 8, 2011 : DECISION ON PATENT TERM
Application No. 11/546,467 :
Filed: October 10, 2006 :
Atty. Dkt. No.: 16113-180001 :

This is a decision on the application for patent term adjustment filed April 5, 2011 requesting that the patent term adjustment be increased from 884 days to 998 days.

The request for reconsideration of the patent term adjustment (PTA) pursuant to 37 CFR 1.705(d) is **DISMISSED**.

The above-identified application matured into U.S. Pat. No. 7,886,176 on February 8, 2011. The patent issued with a patent term adjustment of 884 days. The instant application for patent term adjustment was timely filed in accordance with 37 CFR 1.705(d). Patentee contests the period of adjustment of 341 days accorded pursuant to 37 CFR 1.702(b) and assert that the correct period of adjustment under 37 CFR 1.702(b) is 455 days.

Petitioner's arguments have been carefully considered, but are not persuasive. The period of adjustment pursuant to 37 CFR 1.702(b) was properly calculated at 341 days.

35 USC 154(b)(1)(B) states in relevant part:

> Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including — (i) any time consumed by continued examination of the application requested by the applicant under section 132(b).

37 CFR 1.702(b) states in relevant part:

> Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including: (1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b).

37 CFR 1.703(b) states in relevant part:

> The period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the sum of the following periods: (1) The number of days, if any, in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

Accordingly, in the instant matter, and in compliance with the provisions of law and rules set forth above, the period of adjustment under § 1.702(b) is 341 days, the period from September 17, 2010, the date that the RCE was filed, to February 8, 2011, the date that the patent issued, being excluded from the period of adjustment under 37 CFR 1.702(b).

In view thereof, no adjustment to the patent term will be made.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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OFFICE OF PETITIONS

FISH & RICHARDSON P.C. (TC)
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MINNEAPOLIS MN 55440-1022

In re Patent No. 7,886,173
Issued: February 8, 2011
Application No. 11/546,467
Filed: October 10, 2006
Atty. Dkt. No.: 16113-180001

: DECISION ON REQUEST FOR
: RECONSIDERATION OF
: PATENT TERM ADJUSTMENT

This is a decision on the request for reconsideration of decision mailed May 23, 2011 with respect to the application for patent term adjustment under 37 CFR 1.704(d) filed June 6, 2011. This request, filed July 25, 2011, is deemed timely filed within the meaning of 37 CFR 1.181(f).

RELEVANT BACKGROUND

Patentees request that a decision on this request for reconsideration of patent term adjustment be deferred or delayed until after a final decision has been rendered in Abbott Biotherapeutics Corp v. Kappos, 1:2010cv01853 (D.D.C. 2010).

The request is hereby DENIED. This decision is a final agency action within the meaning of 5 USC §704 for purposes of seeking judicial review. See, MPEP 1002.02.

The above-identified application matured into U.S. Patent No. 7,886,173 on February 8, 2011 with a revised patent term adjustment of 884 days. On May 23, 2011, a decision on patentees' application for patent term adjustment under 37 CFR 1.705(d), filed April 5, 2011, was mailed. The decision under 37 CFR 1.705(d) mailed May 23, 2011 dismissed patentees' request for increase in patent term adjustment from 884 days to 998 days.

Patentees herein request that the patent term adjustment for the above-identified patent be increased from 884 days to 998 days (669 days pursuant to 37 CFR 1.703(a) plus 455 days pursuant to 37 CFR 1.703(b) less 126 days of applicant delay pursuant to 37 CFR 1.704(b)).

Patentees maintain that the Office incorrectly calculated Office delay pursuant to 37 CFR 1.702(b). Patentees contend that the Office erred in subtracting from the "B delay" a period of time that was not "consumed by continued examination of the application." Specifically, patentees argue that subsequent to the filing of the request for continued examination on September 17, 2010, examination of the application closed on October 18, 2010, the date upon which the Notice of Allowance was mailed. Thus, patentees argue that no continued examination took place during the 114 day period from October 18, 2010 (the mailing date of the Notice of

Allowance) until February 8, 2011 (the date the patent was issued). As such, patentees maintain that the "B delay" should include the 114 days and be increased from 341 to 455 days. Thus, patentees conclude that the correct patent term adjustment is thus 998 days (the sum of 669 days of "A delay" and 455 days of "B delay" minus 126 days of applicant delay").

RELEVANT STATUTES

The statutory basis for calculation of "B delay" is 35 U.S.C. 154(b)(1)(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, which provides that:

> Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including —
>
> (i) any time consumed by continued examination of the application requested by the applicant under section 132(b);
>
> (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or
>
> (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued.

The implementing regulation, 37 CFR 1.702(b) provides that:

> Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including:
>
> (1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b);
>
> (2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a);
>
> (3) Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181;

(4) Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or

(5) Any delay in the processing of the application by the Office that was requested by the applicant.

DECISION

Patentees' arguments have been considered, but not found persuasive. The Office calculated the period of "B delay" pursuant to 35 U.S.C. 154(b)(1)(B)(i) and 37 CFR 1.702(b)(1) as 341 days based on the application having been filed under 35 USC 111(a) on October 10, 2006 and the patent not having issued as of October 11, 2009, the day after the date that is three years after the date that the application was filed, and a request for continued examination under 132(b) having been filed on September 17, 2010. In other words, the 114-day period beginning on the date of mailing of the notice of allowance to the date of issuance of the patent was considered time consumed by continued examination of an application under 35 U.S.C. 132(b) and was not included in the "B delay."

The Office's calculation of "B delay" is correct. The "B delay" is an adjustment entered if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed. However, the adjustment does not include, among other things, any time consumed by continued examination of the application at the request of the applicant under 35 U.S.C. 132(b)[1]. So, with respect to calculating the "B delay" where applicant has filed a request for continued examination, the period of adjustment is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the number of days in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

Further, counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued

---

[1] Pursuant to 35 U.S.C. 132(b), 37 CFR 1.114 provides for continued examination of an application, as follows:

(a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:

(1) Payment of the issue fee, unless a petition under § 1.313 is granted;

(2) Abandonment of the application; or

(3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

(b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

examination is filed to the date the patent is issued is proper. Patentees do not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is not any time consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56366, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

Patentees' argument that the period of time after the issuance of a notice of allowance on a request for continued examination is not "any time consumed by continued examination requested by the applicant under section 132(b)" within the meaning of 35 U.S.C. 154(b)(1)(B)(i) is not availing. This limitation is not supported by the statutory language. Garcia v. United States, 469 U.S. 70, 75 (1984) ("only the most extraordinary showing of contrary intentions from [legislative history] would justify a limitation on the 'plain meaning' of the statutory language"). BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning"). The statute provides for a guarantee of no more than 3-year application pendency, by providing for an adjustment in the patent term:

First, "Subject to the limitations of paragraph (2)," means that the limitations of paragraph 2 apply to this paragraph's adjustment of patent term. That is, the day-to-day extension of patent term for pendency beyond the 3 year period is restricted as follows: 1) "B delay" cannot accrue for days of "A delay" that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

Second, "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of the United States) after the application filing date before an adjustment will accrue for "B delay."

Third, "not including- (i) any time consumed by continued examination of the application requested by the applicant under section 132(b); (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), meaning that the three-year period does not include "any time consumed by" or "any delay in processing," as specified in clauses (i)-(iii). This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, 580 F. Supp. 2d 138, 88 U.S.P.Q. 2d 1538 (D.D.C. 2008), because the clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate this effect, the statute, *inter alia*, grants adjustments of patent term whenever the patent prosecution takes more than three years, regardless of the reason. The time consumed by prosecution of the application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. The time it takes to prosecute the application ends not with the mailing of the notice of allowance, but with the issuance of the patent.

Thus, not including "any time consumed by" means not including any days used to prosecute the application as specified in clauses (i)-(ii)[2]. Clause (i) specifies "any time consumed by continued examination of the application requested by the applicant under section 132(b)." Clause (ii) specifies "any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court." "Time" in the context of this legislation throughout refers to days. "Consumed by" means used by or used in the course of. Websters Collegiate Dictionary, (11th ed.). The "any" signifies that the days consumed by are "any" of the days in the pendency of the application, and not just days that occur after the application has been pending for 3 years. As such, "any time consumed by" refers to any days used in the course of 1) continued examination of the application under section 132(b)(the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, and 4) appellate review. Thus, that 3-year period given to the Office to issue a patent before an

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[2] Clause (iii) provides for not including (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued. It is noted that paragraph (3)(C) allows with an adequate showing by applicant for reinstatement of no more than 3 months of the patent term reduced for applicant delay in taking in excess of three months to respond.

adjustment will accrue for "B delay" does not include any days used in the course of or any time consumed by clauses (i)-(ii), including any time consumed by the filing of a request for continued examination.

Fourth, "the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued" meaning that the consequence of this failure is that after "the end of that 3-year period" an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the law. See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See, 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See, 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in BlackLight Power, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. See, BlackLight Power, Inc. v. Rogan, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously been issued for the application. See, In re Drawbaugh, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See, 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37

CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See, 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures[3] permit the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See, 37 CFR 1.114(a)(1).

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the notice of allowance. All the time the application is pending from the date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that request. Applicant has gotten further prosecution of the application without having to file a continuing application under 37 CFR 1.53(b).

All of the continued examination pursuant to the filing of the request by the applicant is properly excluded from the delay attributed to the Office. 35 U.S.C. 154(b)(1)(B)'s guarantee of a total application pendency of no more than three years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

CONCLUSION

[3] Note, on occasion, even where a request for continued examination has already been filed and a notice of allowance issued pursuant to that request, applicant may file a further request for continued examination.

For the above-stated reasons, a review of the petition and file wrapper of the above-identified patent reveals that the above-identified patent is not entitled to a patent term extension or adjustment of 998 days. Therefore, the petition to change the patent term adjustment indicated on the above-identified patent to 998 days is **DENIED**.

This decision may be viewed as final agency action. See, MPEP 1002.02(b).

Telephone inquiries specific to this matter should be directed to Attorney Advisor Alesia M. Brown at (571) 272-3205.

Anthony Knight
Director
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/546,504	10/11/2006	John P. Callison	MAG-01C-D1	4510

7590 02/24/2011

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EXAMINER	
YENKE, BRIAN P	

ART UNIT	PAPER NUMBER
2422	

MAIL DATE	DELIVERY MODE
02/24/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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TECHNOLOGY CENTER 2400

Montgomery W Smith
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In re Application of: Callison et al.
Application No. 11/546,504
Filed: October 11, 2006
For: LASER PROJECTION SYSTEM

DECISION ON PETITION UNDER 37 C.F.R. § 1.181 TO WITHDRAW HOLDING OF ABANDONMENT

This is a decision on the petition filed January 20, 2011 under 37 CFR § 1.181 requesting the withdrawal of the holding of abandonment of the above-identified application.

This application was held abandoned for failure to timely file a proper reply to the communication mailed on July 15, 2009. A Notice of Abandonment was mailed on January 20, 2011.

In support of the petition, petitioner stated that a response was timely filed on January 15, 2011 and provided a copy of the image File Wrapper Screen shot from Public Pair. A search of the file record discovered an amendment that was timely filed on January 15, 2011.

For the above stated reasons, the petition is **GRANTED**.

The Notice of Abandonment mailed on January 20, 2011 is hereby withdrawn. The application file is being forwarded to an examiner to issue an appropriate office action.

Any inquiry regarding this decision should be directed to Christopher Grant, Quality Assurance Specialist, at (571) 272-7294.

/Christopher Grant/
Christopher Grant
Quality Assurance Specialist
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Networking, Multiplexing, Cable and Security

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MAR 09 2011

OFFICE OF PETITIONS

In re Application of
John P. Callison, et al.
Application No. 11/546,504
Filed: October 11, 2006
Attorney Docket No. MAG-01C-D1

DECISION ON PETITION

This is a decision on the renewed petition, filed January 20,2011, which is being treated as a petition under 37 CFR 1.8(b), requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely respond to the Notice of Non-Compliant Amendment (Notice) of July 15, 2009, which set a shortened statutory period for reply of one (1) month or thirty (30) days (or whichever is longer). Accordingly, a reply was due on or before August 15, 2009.

Petitioner states that a timely reply was received in the USPTO on January 15, 2010, which included the following papers: an amendment with a five (5) month extension of time. The original reply is in the file.

The petition satisfies the above requirements of 37 CFR 1.8(b). Accordingly, the holding of abandonment for failure to timely file a reply to the Office action of July 15, 2009 is hereby **withdrawn** and the **application restored to pending status**.

Telephone inquiries concerning this decision should be directed to the April M. Wise at 571-272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

This application is being referred to Technology Center AU 2422 for processing of the amendment previously filed January 15, 2010.

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

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SEP 29 2010

OFFICE OF PETITIONS

In re Application of	:	
SAQUIB et al.	:	
Application No. 11/546,633	:	DECISION ON APPLICATION
Filed: 10/12/2006	:	FOR
Atty Docket No. **BA-0339	:	PATENT TERM ADJUSTMENT

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT" filed September 2, 2010. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from two hundred thirty-six (236) days to two hundred ninety-one (291) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PALM and PAIR screens to reflect that the corrected Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is two hundred ninety-one (291) days. A copy of the updated PAIR screen, showing the corrected determination, is enclosed.

A review of the application history confirms that applicant's characterization of the basis for and amounts of the adjustments and reductions of patent term in this application at the time of the mailing of the notice of allowance are correct.

In view thereof, the corrected determination of patent term adjustment at the time of the mailing of the notice of allowance is two hundred ninety-one (291) days.

The Office acknowledges receipt of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3211.

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PAIR Screen

Patent Term Adjustments

Patent Term Adjustment (PTA) for Application Number: 11/546,633

Filing or 371(c) Date:	10-12-2006	Overlapping Days Between {A and B} or {A and C}:	0
Issue Date of Patent:	-	Non-Overlapping USPTO Delays:	301
A Delays:	301	PTO Manual Adjustments:	55
B Delays:	0	Applicant Delays:	65
C Delays:	0	Total PTA Adjustments:	291

Patent Term Adjustment History **Explanation Of Calculations**

Number	Date	Contents Description	PTO (Days)	APPL (Days)	Start
74	09-29-2010	Adjustment of PTA Calculation by PTO		1	0
73	09-29-2010	Adjustment of PTA Calculation by PTO	56		0
66	06-02-2010	Mail Notice of Allowance			0
65	06-01-2010	Issue Revision Completed			0
64	06-01-2010	Document Verification			0
63	06-01-2010	Notice of Allowance Data Verification Completed			0
62	06-01-2010	Case Docketed to Examiner in GAU			0
61	05-26-2010	Notice of Allowability			0
60	05-05-2010	Information Disclosure Statement considered			0
59	05-05-2010	Reference capture on IDS			0
58	05-05-2010	Information Disclosure Statement (IDS) Filed		9	55
57	05-05-2010	Information Disclosure Statement (IDS) Filed			0
56	05-04-2010	Date Forwarded to Examiner			0
55	04-26-2010	Response after Non-Final Action		56	49
54	01-28-2010	Mail Examiner Interview Summary (PTOL - 413)			0
53	01-28-2010	Mail Examiner Interview Summary (PTOL - 413)			0
52	01-26-2010	Examiner Interview Summary Record (PTOL - 413)			0
50	01-19-2010	Examiner Interview Summary Record (PTOL - 413)			0

49	12-01-2009	Mail Non-Final Rejection	0
48	11-25-2009	Non-Final Rejection	0
47	09-17-2009	Information Disclosure Statement considered	0
46	10-16-2009	Date Forwarded to Examiner	0
45	10-09-2009	Amendment Submitted/Entered with Filing of CPA/RCE	0
44	10-16-2009	Date Forwarded to Examiner	0
43	10-09-2009	Request for Continued Examination (RCE)	0
42	10-16-2009	Disposal for a RCE / CPA / R129	0
41	09-17-2009	Information Disclosure Statement (IDS) Filed	0
40	10-09-2009	Workflow - Request for RCE - Begin	0
39	09-17-2009	Information Disclosure Statement (IDS) Filed	0
38	08-12-2009	Mail Examiner Interview Summary (PTOL - 413)	0
37	08-10-2009	Examiner Interview Summary Record (PTOL - 413)	0
36	07-09-2009	Mail Final Rejection (PTOL - 326)	0
35	07-07-2009	Final Rejection	0
34	06-30-2009	Date Forwarded to Examiner	0
33	06-26-2009	Response to Election / Restriction Filed	0
32	05-26-2009	Mail Restriction Requirement	0
31	05-23-2009	Requirement for Restriction / Election	0
30	05-20-2009	Date Forwarded to Examiner	0
29	04-30-2009	Response after Non-Final Action	0
28	04-03-2009	Mail Examiner Interview Summary (PTOL - 413)	0
27	03-31-2009	Examiner Interview Summary Record (PTOL - 413)	0
26	01-30-2009	Mail Non-Final Rejection	0
25	01-27-2009	Non-Final Rejection	0

24	12-10-2008	Change in Power of Attorney (May Include Associate POA)		0
23	11-20-2008	Date Forwarded to Examiner		0
22	11-07-2008	Response to Election / Restriction Filed		0
21	10-08-2008	Mail Restriction Requirement	301	-1
20	10-06-2008	Requirement for Restriction / Election		0
16	12-17-2007	Correspondence Address Change		0
14	10-12-2006	Information Disclosure Statement (IDS) Filed		0
13	02-20-2007	Case Docketed to Examiner in GAU		0
12	02-15-2007	PG-Pub Issue Notification		0
11	11-09-2006	IFW TSS Processing by Tech Center Complete		0
10	11-06-2006	Application Return from OIPE		0
9	11-06-2006	Application Is Now Complete		0
8	11-01-2006	Pre-Exam Office Action Withdrawn		0
7	11-01-2006	Application Return TO OIPE		0
6	11-01-2006	Application Dispatched from OIPE		0
5	11-01-2006	Application Is Now Complete		0
4	10-24-2006	Cleared by OIPE CSR		0
3	10-24-2006	CASE CLASSIFIED BY OIPE		0
2	10-19-2006	IFW Scan & PACR Auto Security Review		0
1	10-12-2006	Initial Exam Team nn		0

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P.O. Box 1450
Alexandria, VA 22313-1450
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In re Patent No. 7239175
Issue Date: July 3,2007
Application No. 11546681
Filed: October 13,2006
Attorney Docket No. MADURAWE 041

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed August 24,2011 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of August 24,2011 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

PTO/SB/66 (03-09)
Approved for use through 03/31/2012. OMB 0651-0016
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
7,239,175	2007-07-03	11/546,681	2006-10-13	TIER-0002C1C

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

SMALL ENTITY

☐ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☒ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

NOT Small Entity			Small Entity		
	Fee	Code		Fee	Code
◉	3 ½ year	(1551)	○	3 ½ year	(2551)
○	7 ½ year	(1552)	○	7 ½ year	(2552)
○	11 ½ year	(1553)	○	11 ½ year	(2553)

SURCHARGE

The surcharge required by 37 CFR 1.20(i)(2) (Fee Code 1558) must be paid as a condition of accepting unintentionally delayed payment of the maintenance fee.

MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition.

STATEMENT

THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL

PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

I certify, in accordance with 37 CFR 1.4(d)(4) that I am

◉ An attorney or agent registered to practice before the Patent and Trademark Office

○ A sole patentee

○ A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.

○ A joint patentee; all of whom are signing this e-petition

○ The assignee of record of the entire interest

PTO/SB/66 (03-09)
Approved for use through 03/31/2012. OMB 0651-0016
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature			
Signature	/Jose S. Garcia/	Date (YYYY-MM-DD)	2011-08-24
Name	Jose S. Garcia	Registration Number	43628

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/ or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.**

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.

2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.

6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).

7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.

9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

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PHILIP H. BURRUS, IV
460 Grant Street
Atlanta GA 30312

MAILED

DEC 28 2010

OFFICE OF PETITIONS

In re Application of :
Stephen Malaby, et al. :
Application No. 11/546,795 : DECISION ON PETITION
Filed: October 12, 2006 :
Attorney Docket No. BPCUR0012SM (C-118) :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 22, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, April 13, 2010, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on July 14, 2010. The Notice of Abandonment was mailed November 17, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $810, and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to Terri Johnson at (571) 272-2991.

This application is being referred to Technology Center AU 2453 for appropriate action by the Examiner in the normal course of business on the reply received.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

OK TO ENTER: /D.R./

OK TO ENTER: /D.R./

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent No. 7,694,626 B2)
)
Application Serial No. 11/546,878)
)
Inventor: BRANT S. DAVIS)
)
Issued: April 13, 2010)
)
For: Apparatus And Method To Impart)
Smoke Flavoring To Barbequed Meat)
)
_____/

Sacramento, California 95811
June 1, 2010

REQUEST FOR ISSUANCE OF CORRECTED PATENT
PURSUANT TO 35 U.S.C. § 254

Certificate Of Correction Branch
Commissioner For Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

This communication is filed in response to the issuance of U.S. Patent No. 7,694,626, based upon Application Serial No. 11/546,878, in the name of Brant S. Davis.

Patent No. 7,694,626 was issued on April 13, 2010. A review of the Patent Certificate reveals that the '626 Patent, as printed, includes **only *Three (3) Claims***.

A review of the File History, however, establishes that ***Claims 1 through 12*** **were allowed in the Application.** A chronological history of the salient facts is presented below.

In light of the fact that the errors contained in the Patent are so significant, Applicant

respectfully requests that a corrected Patent be issued by the Director, as provided for in 35 U.S.C. § 254.

Chronology Of Salient Facts

1. The Application as filed on May 3, 2006, included Claims 1 through 20.
2. On March 13, 2009, the Examiner issued an Office Action indicating that Claims 1 through 20 were subject to a Restriction Requirement.
3. On April 1, 2009, Applicant filed a Response to the Restriction Requirement, and therein **Elected Group I, Claims 1-9 and 10-12**. Applicant also traversed the Examiner's assessment that "no claim is generic." Applicant contended that Claim 1 was generic to Species A and B.
4. On June 18, 2009, the Examiner issued a second Office Action, allowing Claims 10 and 11, but *incorrectly* stating therein that **Claims 1-9** had been withdrawn.
5. On July 2, 2009, Applicant's Attorney and the Examiner participated in a telephonic interview wherein Claims 1 through 12 were discussed, including the fact that Applicant had elected all of Group 1, including Species A and B, in his Response to the Restriction Requirement filed April 1, 2009.
6. On July 6, 2009, the Examiner issued an Office Action/Interview Summary which did not accurately reflect the substance of the telephonic interview.
7. Therefore, on July 15, 2009, Applicant filed an Amendment After Telephonic Interview. The twenty (20) Claims originally in the Application were included in the Amendment which clearly set forth that: Claim 1 was "currently amended"; Claims 2 though 12 were "original"; and that Claims 13 through 20

were "withdrawn." A Replacement Sheet of drawings to provide a clear disclosure of a claimed feature, was also provided.

8. On November 16, 2009, the Examiner issued a Notice of Allowability, in response to Applicant's Amendment filed July 15, 2009, stating that *Claims 10-12 were allowed.* Therein, once again the Examiner *incorrectly* stated that **Claims 1-9** had not been elected in response to the Restriction Requirement.
9. On November 24, 2009, Applicant's Attorney and the Examiner again participated in a telephonic interview. Claims 1 through 12, as well as possible amendments to some of said claims, were discussed. The Examiner stated that he would allow Claims 1 through 12 and issue a new Notice of Allowability. (No Interview Summary appears in the electronic file wrapper.)
10. On December 11, 2009, Applicant's Attorney contacted the Examiner again by telephone regarding the status of the new Notice of Allowability, allowing Claims 1 through 12. The Examiner stated that it had been issued on December 2, 2009, and should be mailed within a few days.
11. On December 22nd and 23rd, Applicant's Attorney left telephone messages for the Examiner regarding the fact that the new Notice of Allowability had not been received nor was it reflected in the electronic file wrapper.
12. On December 29, 2009, the Supplemental Notice of Allowability was mailed, which reflected the *allowance of Claims 1 through 12.* Included in said mailing was an Examiner's Amendment made pursuant to the previous telephonic interviews with Applicant's Attorney.
13. On January 6, 2010, Applicant submitted the Issue Fee.

A copy of the Amendment After Telephonic Interview (filed July 15, 2009) showing the Claims, as amended and allowed, and showing the correct wording of Claims 1 through 12, is enclosed herewith.

Requested Action On Part Of Director

The records clearly disclose that the mistakes discussed herein were made through the fault of the Patent Office, and therefore come within the purview of 35 U.S.C. 254. These errors include: the omission of nine (9) of the twelve (12) Claims which were allowed; and, omitted and incorrect language in Claim 1, of the Patent as issued. Under such circumstances a Corrected Patent should be issued.

Request is hereby made that a Corrected Patent be issued reflecting Claims 1 through 12, as amended and allowed.

Respectfully submitted,

Brant S. Davis

Dated: June 1, 2010

By: /R. Michael West/
R. Michael West
Applicant's Attorney

RMW/cb
Enclosure: copy of Amendment After Telephonic Interview, filed July 15, 2009

Correspondence Address:
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: BRANT S. DAVIS	)	
	)	
Serial No. 11/546,878	)	Patent
	)	
Filed: October 11, 2006	)	Examiner: Daniel L. Robinson
	)	
For: Apparatus And Method To Impart Smoke Flavoring To Barbequed Meats	)	Art Unit: 3742
	)	
	/	

AMENDMENT AFTER TELEPHONIC INTERVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

This communication is sent in response to your Office Action dated July 6, 2009, including the Examiner's Interview Summary. The Examining Attorney is thanked for the courtesy of the telephonic interview, on July 2, 2009. In accordance with the requirements therein, Applicant provides the following summary of that telephonic interview.

The subject matter of Claim 1 was discussed, with respect to amendments which could be made thereto so as to make Claim 1 generic as to Species A and B. In particular, it was discussed to add claim language describing the location of the claimed "at least one aperture" in the alternative, namely, either in the lid of the canister (Species A) or in the sidewall of the canister (Species B). Accordingly, in Claim 1 as set forth below, such language and other appropriate

changes have been made to Claim 1, so that it reads both on Species A and on Species B. Entry of these amendments to Claim 1, and the withdrawal of the Final Rejection respecting the generic nature of Claim 1 is also requested.

In addition, so that the drawings provide a clear disclosure of each of the physical features set forth in the claims, it was agreed that an aperture 17 in the sidewall of the canister should be added to Figure 2 of the drawings. There is support for this feature in the Abstract and in the Specification (page 5, lines 6-8), so no new matter is introduced by this addition of an aperture 17 to the drawings. A Replacement Sheet of drawings accompanies this Amendment, and entry into the record is respectfully requested.

CLAIM AMENDMENTS

1. (currently amended) An apparatus for imparting smoke flavoring the barbequed meat comprising:

a. fire-proof smoke canister ~~having at least one aperture in a wall thereof~~, said canister having a body with an open top and a detachable lid covering said open top, said canister having at least one aperture either in said lid or in a sidewall thereof; and,

b. a burnable mixture comprising at least one natural wood product and at least one herb seasoning, said burnable mixture being contained within said canister body with said lid thereon, whereby when heat is applied to said canister said mixture burns in an oxygen-starved environment causing smoke to exude through said aperture.

2. (original) An apparatus as in claim 1 in which said wood product comprises hickory, mesquite, alder, applewood, oak, maple, cedar, sassafras, walnut, cherry, grape, pear, or almond.

3. (original) An apparatus as in claim 1 in which said wood product is manufactured from wood chips or wood shavings from an alcoholic beverage fermentation barrel.

4. (original) An apparatus as in claim 3 in which said alcoholic beverage comprises whiskey, wine, bourbon, or brandy.

5. (original) An apparatus as in claim 3 in which said wood barrel comprises French oak, American oak, red oak, or white oak.

6. (original) An apparatus as in claim 1 in which said wood product comprises wood chips, wood shavings, or sawdust.

7. (original) An apparatus as in claim 1 in which said herb seasoning comprises oregano, fennel, dill, sage, ginger, rosemary, thyme, or celery seed.

8. (original) An apparatus as in claim 1 in which said aperture is provided in said lid.

9. (original) An apparatus as in claim 1 in which said canister may be re-loaded repeatedly with new burnable mixture for successive barbeques.

10. (original) An apparatus for imparting smoke flavoring the barbequed meat comprising:

a. a smoke canister, said canister having a body with an open top and a detachable lid covering said open top, said lid being provided with an aperture therein; and,

b. a burnable mixture comprising shavings removed from an inner wall of a wood barrel previously used in the fermentation of an alcoholic beverage, and at least one herb seasoning, said burnable mixture being contained within said canister body with said lid thereon, whereby when heat is applied to said canister said mixture burns in an oxygen-starved environment causing smoke to exude through said aperture.

11. (original) An apparatus as in claim 10 in which said wood barrel comprises French oak, American oak, red oak, or white oak.

12. (original) An apparatus as in claim 10 in which said herb seasoning comprises oregano, fennel, dill, sage, ginger, rosemary, thyme, or celery seed.

13. (withdrawn) A method for imparting smoke flavoring the barbequed meat comprising:

a. providing a fire-proof smoke canister having at least one aperture in a wall thereof, said canister having a body with an open top and a detachable lid covering said open top;

b. loading a burnable mixture comprising at least one natural wood product and at least one herb seasoning into said canister,

c. installing said lid over said open top; and,

d. placing said canister within a barbeque, in proximity to a source of heat, whereby said mixture burns in an oxygen-starved environment causing smoke to exude through said aperture.

14. (withdrawn) A method as in claim 13 in which said wood product comprises hickory, mesquite, alder, applewood, oak, maple, cedar, sassafras, walnut, cherry, grape, pear, or almond.

15. (withdrawn) A method as in claim 13 in which said wood product is manufactured from wood chips or wood shavings from an alcoholic beverage fermentation barrel.

16. (withdrawn) A method as in claim 15 in which said alcoholic beverage comprises whiskey, wine, bourbon, or brandy.

17. (withdrawn) A method as in claim 15 in which said wood barrel comprises French oak,

American oak, red oak, or white oak.

18. (withdrawn) A method as in claim 13 in which said wood product comprises wood chips, wood shavings, or sawdust.

19. (withdrawn) A method as in claim 13 in which said herb seasoning comprises oregano, fennel, dill, sage, ginger, rosemary, thyme, or celery seed.

20. (withdrawn) A method as in claim 13 in which said canister is placed either directly upon burning coals or upon a cooking grill within said barbeque.

REMARKS

Applicant respectfully submits that Claim 1, as amended, is generic as to Species A and to Species B. New drawings have been submitted, to show in Figure 2 an aperture 17 in the sidewall of the canister. No new matter has been introduced by way of the amendments to Claim 1 and the submission of these new drawings, as support is provided both in the Abstract and in the written Specification in the original Application.

In the Office Action dated June 18, 2009, the Examiner allowed Claims 10 and 11 over the cited art. It is also believed that Claim 12 should have also been allowed at that time, as Claim 12 is dependent upon independent Claim 10, indicated as being allowable.

As to Claims 1-9, Claim 1 has been amended as discussed above so that it is generic as to Species A and B. Claim 1 is believed patentably distinct over the prior art of record, as are dependent claims 2-9.

In summary, it is believed that claims 1-12, in their present form, are distinguishable over the prior art of record, and that the Examiner can, with propriety, issue a Notice Of Allowance for these Claims. Such action is respectfully urged.

Respectfully submitted,

BRANT S. DAVIS

By: /R. Michael West /
R. Michael West
Applicant's Attorney

Enclosure: One (1) Sheet Of Drawings

The correspondence address
for this communication is:

R. Michael West, Esq.
Law Offices Of
R. Michael West
A Professional Corporation
1922 21st Street
Sacramento, California 95811
Telephone: (916)-444-5444
Facsimile: (916)-444-5441
E-mail mwest@saciplaw.com

Comment [d1]:

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : June 1, 2011

TO SPE OF : ART UNIT 3742

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/546878 Patent No.: 7694626

CofC mailroom date: 06/01-11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Note: should the claims change? RoChaun Johnson-Hardwick

Certificates of Correction Branch

571 272-0470

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

xApproved	**All** changes apply.
☐ **Approved in Part**	Specify below which changes **do not** apply.
☐ **Denied**	State the reasons for denial below.

Comments: the COCX filed 6-1-2010 has been entered and approved.

//Daniel Robinson// art unit 3742

DANIEL ROBINSON
PRIMARY EXAMINER

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DANIEL ROBINSON
PRIMARY EXAMINER

3742

Daniel Robinson art unit 3742 | Tu

Comment [d2]:

Hoang SPE

SPE Art Unit

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : June 1, 2011

TO SPE OF : ART UNIT 3742

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/546878 Patent No.: 7694626

CofC mailroom date: 06/01-11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Note: should the claims change?

RoChaun Johnson-Hardwick

Certificates of Correction Branch

571 272-0470

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

xApproved	**All** changes apply.
☐ **Approved in Part**	Specify below which changes **do not** apply.
☐ **Denied**	State the reasons for denial below.

Comments: _____

_____

_____

_____ /TU

HOANG/

SPE Art Unit

3742

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/546,880	10/12/2006	Edwin R. Chapman	960296.00308	5091

7590 06/21/2011

QUARLES & BRADY LLP
411 E. WISCONSIN AVENUE, SUITE 2040
MILWAUKEE, WI 53202-4497

EXAMINER	
DUFFY, PATRICIA ANN	
ART UNIT	**PAPER NUMBER**
1645	
NOTIFICATION DATE	**DELIVERY MODE**
06/21/2011	ELECTRONIC

ACKNOWLEDGEMENT OF REQUEST

Notice of Allowance/Allowability Mailed

The request to print a color drawing reference as the first paragraph in the portion of the specification containing a brief description of the drawings as required by 37 CFR 1.84 and MPEP § 608.02 has been received by the United States Patent and Trademark Office and will be entered into the specification.

571-272-4200 or 1-888-786-0101
Application Assistance Unit
Office of Data Management

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

June 21, 2011

QUARLES & BRADY LLP
411 E. WISCONSIN AVENUE, SUITE 2040
MILWAUKEE WI 53202-4497

In re Application of	:	
Edward R. Chapman et al.	:	**DECISION ON PETITION**
Application No. 11546880	:	
Filed: 10/12/2006	:	***ACCEPTANCE OF COLOR***
Attorney Docket No. 960296.00308	:	***DRAWINGS***

This is a decision on the Petition to Accept Color Drawings under 37 C.F.R 1.84 (a) (2), received in the United States Patent and Trademark Office (USPTO) October 12, 2006.

The petition is **GRANTED**.

A grantable petition under 37 C.F.R. 1.84(a) (2) must be accompanied by the following.

1. The fee set forth under 37 C.F.R. 1.17(h),
2. Three (3) sets of the color drawings in question, or (1) set if filed via EFS, and
3. The specification contains appropriate language referring to the color drawings as the first paragraph in that portion of the specification relating to the brief description of the drawings.

The petition was accompanied by all of the required fees and drawings. The specification contains the appropriate language. Therefore, the petition is GRANTED.

Telephone inquires relating to this decision may be directed to the undersigned in the Office of Data Management at 571-272-4200.

/Don Fairchild/
Office of Data Management
Publications Branch

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Dicke, Billig & Czaja, PLLC
ATTN: MD Matters
Fifth Street Towers, Suite 2250
100 South Fifth Street
Minneapolis MN 55415

MAILED
MAR 25 2011
OFFICE OF PETITIONS

In re Application of :
Hurt :
Application No.: 11/546,886 : ON PETITION
Filed: October 12, 2006 :
Attorney Docket No: M190.249.102/P0021348.02 :

This is a decision on the petition under 37 CFR §1.137(b), February 8, 2011, to revive the above-identified application.

The petition is **dismissed**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition" under 37 CFR 1.137(b)."

This application became abandoned for failure to respond in a timely manner to the final Office action mailed April 20, 2010. The notice set a shortened statutory period for reply of three months from its mailing date. No response was received within the allowable period, and the application became abandoned on July 21, 2010. A Notice of Abandonment was mailed October 22, 2010.

Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a non-provisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee, or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

Item 1 above has not been satisfied as no response to the final Office action was filed with the petition. The renewed petition must be accompanied by a proper response to the final Office action, which might include either an amendment that places the application in condition for allowance, a Request for Continued Examination under 37 CFR 1.114, or a Notice of Appeal.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
United States Patent and Trademark Office
Box 1450
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300
Attn: Office of Petitions

Questions regarding how to properly respond to the Pre-Interview Communication should be directed to the examiner. Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

RECEIVED
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APR 06 2011

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Robert F. Hurt	Examiner:	Ginger T. Chapman
Serial No.:	11/546,886	Group Art Unit:	3761
Filed:	October 12, 2006	Docket No.:	M190.249.102 / P0021348.02
Title:	CATHETER AND ASSOCIATED METHOD FOR DRAINAGE OF CEREBROSPINAL FLUID		

RESPONSE TO DECISION ON PETITION

Commissioner for Patents
Attn: Office of Petitions
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This submission is responsive to the decision on petition dated March 25, 2011, which indicated that the petition was dismissed because the petition did not include a response to the Final Office Action dated April 20, 2010.

On February 8, 2011, the undersigned filed U.S. Applic. No. 13/022,809, which is designated as a continuation-in-part of U.S. Applic. No. 11/546,886, which is the subject of the present petition to revive.

The filing of U.S. Applic. No. 13/022,809 thereby meets the requirements of 37 C.F.R. § 1.137(b)(1), which was the only section indicated as being omitted in the decision on petition dated March 25, 2011.

Reconsideration and granting of this petition to revive are respectfully requested. If there are any further questions regarding this submission, please contact the undersigned.

Respectfully submitted,

Robert F. Hurt,

By his attorneys,

Date: April 6, 2011

/Michael A. Bondi/
Michael A. Bondi
Reg. No. 39,616

Doc Code: PET.AUTO **Document Description: Petition automatically granted by EFS-Web**	PTO/SB/83 U.S. Patent and Trademark Office Department of Commerce

Electronic Petition Request	**REQUEST FOR WITHDRAWAL AS ATTORNEY OR AGENT AND CHANGE OF CORRESPONDENCE ADDRESS**
Application Number	11546923
Filing Date	11-Oct-2006
First Named Inventor	Hamid Bahadori
Art Unit	2166
Examiner Name	AMY NG
Attorney Docket Number	020899-002010US
Title	Real time web usage reporter using RAM

◉ Please withdraw me as attorney or agent for the above identified patent application and the practitioners of record associated with Customer Number: 20350

The reason(s) for this request are those described in 37 CFR:

10.40(b)(2)

Certifications

☒ I/We have given reasonable notice to the client, prior to the expiration of the response period, that the practitioner(s) intend to withdraw from employment

☒ I/We have delivered to the client or a duly authorized representative of the client all papers and property (including funds) to which the client is entitled

☒ I/We have notified the client of any responses that may be due and the time frame within which the client must respond

Change the correspondence address and direct all future correspondence to:
The address of the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71, associated with Customer Number: 25259

I am authorized to sign on behalf of myself and all withdrawing practitioners.

Signature	/Paul C. Haughey/
Name	Paul C. Haughey
Registration Number	31836

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Decision Date : April 5,2011

In re Application of :

Hamid Bahadori

Application No : 11546923

Filed : 11-Oct-2006

Attorney Docket No : 020899-002010US

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY/AGENTOF RECORD

This is an electronic decision on the Request to Withdraw as attorney or agent of record under 37 CFR§ 1.36(b), filed April 5,2011

The request is **APPROVED**

The request was signed by Paul C. Haughey (registration no. 31836) on behalf of all attorneys/agents associated with Customer Number 20350 . All attorneys/agents associated with Customer Number 20350 have been withdrawn.

Since there are no remaining attorneys of record, all future communications from the Office will be directed to the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71, with Customer number 25259 .

As a reminder, requester is required to inform the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71 of the electronically processed petition.

Telephone inquiries concerning this decision should be directed to the Patent Electronic Business Center (EBC) at 866-217-9197.

Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : December 11, 2011

TO SPE OF : ART UNIT 3777
1

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/546927 Patent No.: 79562188

CofC mailroom date: 11-4-11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Note: _____

_____

Magdalene Talley
Certificates of Correction Branch

571-272-0423 _____

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

X **Approved**	**All** changes apply.
☐ **Approved in Part**	Specify below which changes **do not** apply.
☐ **Denied**	State the reasons for denial below.

Comments: _____

_____

_____

_____

_____

/Tse Chen/ 3777
SPE **Art Unit**

Doc Code: PET.RELIEF
Document Description: Certification and Request for Disaster Relief

PTO/SB/425 (03-11)

CERTIFICATION AND REQUEST FOR RELIEF DUE TO EVENTS OF MARCH 11, 2011, IN JAPAN (Page 1 of 2)

Nonprovisional Application Number or Control Number (if applicable):	Patent Number (if applicable):
11/547,003	
First Named Inventor:	Title of Invention:
Naohiro Sonobe	ADSORBENT FOR AN ORAL ADMINISTRATION, AND AGENT

APPLICANT/PATENTEE/REEXAMINATION PARTY HEREBY CERTIFIES AND REQUESTS THE FOLLOWING FOR THE ABOVE-IDENTIFIED APPLICATION/PATENT/REEXAMINATION PROCEEDING.

1. FOR PATENT APPLICATIONS AND REEXAMINATION PROCEEDINGS PENDING IN THE USPTO AS OF MARCH 11, 2011, IN WHICH A COMMUNICATION FROM THE USPTO IS SOUGHT TO BE REMAILED:

   a. One or more inventors, an assignee, or a correspondence address (for the application/proceeding) is in an area of Japan affected by the earthquake and/or tsunami of March 11, 2011.

   b. A reply or response to an Office action (final, non-final, or other), a notice of allowance, or other Office notice (hereinafter collectively referred to as "Office communication") is outstanding on March 11, 2011.

   c. The statutory or non-statutory time period set for response has not yet expired.

   d. Withdrawal and reissuance of the Office communication is requested.

   e. It is acknowledged that if this request is not made within sufficient time so that withdrawal and reissuance of the Office communication occur prior to expiration of the statutory or non-statutory time period (as permitted to be extended under 37 CFR 1.136(a), or as extended under 37 CFR 1.550(c) or 1.956), this request may not be granted.

   f. The need for the reissuance of the Office communication was due to the effects of the earthquake and/or tsunami of March 11, 2011.

   g. This request is being sent via EFS-Web or by mail directed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

2. FOR PATENTEES WHO WERE UNABLE TO TIMELY PAY A PATENT MAINTENANCE FEE DURING THE SIX-MONTH GRACE PERIOD FOLLOWING THE WINDOW TO PAY THE MAINTENANCE FEE:

   a. The original window of time to pay the maintenance fee without the surcharge required by 37 CFR 1.20(h) expired on or after March 11, 2011.

   b. The delay in paying the fee was due to the effects of the earthquake and/or tsunami of March 11, 2011.

   c. The USPTO is requested to *sua sponte* waive the surcharge in 37 CFR 1.20(h) for paying a maintenance fee during the six-month grace period following the window to pay the maintenance fee.

   d. This request and payment of the maintenance fee during the six-month grace period following the window to pay the maintenance fee is being mailed to: Director of the United States Patent and Trademark Office, Attn: Maintenance Fee, 2051 Jamieson Avenue, Suite 300, Alexandria, VA 22314; or being transmitted via facsimile to: 571-273-6500.

CERTIFICATION AND REQUEST FOR RELIEF DUE TO EVENTS OF MARCH 11, 2011, IN JAPAN (Page 2 of 2)

3. FOR PATENTEES WHO NEED TO FILE A PETITION TO ACCEPT A DELAYED MAINTENANCE FEE PAYMENT UNDER 37 CFR 1.378(c):

   a. The maintenance fee payment was required to have been paid after March 10, 2011.

   b. A petition under 37 CFR 1.378(c) (using USPTO form PTO/SB/66 – Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(c))) is being promptly filed accompanied by the applicable maintenance fee payment (but not the surcharge under 37 CFR 1.20(i)).

   c. The delay in payment of the maintenance fee was due to the effects of the earthquake and/or tsunami of March 11, 2011.

   d. The USPTO is requested to *sua sponte* waive the surcharge in 37 CFR 1.20(i) for accepting a delayed maintenance fee payment.

   e. It is acknowledged that the petition to accept a delayed maintenance fee payment under 37 CFR 1.378(c) must be filed by March 11, 2012, in order to be entitled to a waiver of the surcharge under 37 CFR 1.20(i).

   f. It is acknowledged that the petition to accept a delayed maintenance fee payment under 37 CFR 1.378(c) must be filed within twenty-four months from the expiration date of the patent. *See* 35 U.S.C 41(c).

   g. This request and the petition to accept a delayed maintenance fee payment under 37 CFR 1.378(c) is being submitted via EFS-Web or by mail directed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

4. FOR NONPROVISIONAL PATENT APPLICATIONS FILED WITHOUT AN EXECUTED OATH OR DECLARATION OR PAYMENT OF THE BASIC FILING FEE, SEARCH FEE, AND/OR EXAMINATION FEE:

   a. The nonprovisional patent application was filed on or after March 11, 2011, and prior to April 12, 2011.

   b. The late filing of the oath or declaration or the basic filing fee, search fee, or examination fee was due to the effects of the earthquake and/or tsunami of March 11, 2011.

   c. The USPTO is requested to *sua sponte* waive the surcharge set forth in 37 CFR 1.16(f) for the late filing of the oath or declaration or basic filing fee, search fee, and/or examination fee.

   d. This request, together with the executed oath or declaration or the basic filing fee, search fee, or examination fee, as well as the reply to the Notice to File Missing Parts, is being submitted via EFS-Web or by mail directed to Mail Stop Missing Parts, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Signature	Date April 4, 2011
Name (Print/Typed) Joseph R. Snyder	Practitioner Registration Number 39,381

Note: *Signatures of all the inventors, § 1.41(b) applicants, or assignees of record of the entire interest or their representative(s), or reexamination requesters at the appeal stage are required in accordance with 37 CFR 1.33 and 11.18. Please see 37 CFR 1.4(d) for the form of the signature. If necessary, submit multiple forms for more than one signature, see below*.*

☐ *Total of _____ forms are submitted.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

KILPATRICK TOWNSEND & STOCKTON LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO CA 94111-3834

MAILED

APR 08 2011

OFFICE OF PETITIONS

In re Application of	:	
Sonobe et al.	:	
Application No. 11/547,003	:	DECISION ON PETITION
Filed: October 2, 2006	:	
Attorney Docket No. 09-166-US	:	

This is a decision on the request filed April 5, 2011, seeking relief under the provisions of an announcement by the Under Secretary and Director of the United States Patent and Trademark Office on March 17, 2011, http://www.uspto.gov/patents/announce/japan_relief_2011mar17.pdf, providing relief to inventors and patent owners in areas affected by the earthquake and resulting tsunami of March 11, 2011.

The request for relief is **GRANTED**.

In the above-identified application, an Office action was mailed on January 5, 2011. The instant petition was filed prior to the expiration of the period for reply and the certifications for granting of relief are considered to be met by the submission of the request.

Additionally, the Power of Attorney and Change of Correspondence Address, is hereby accepted and made of record.

Telephone inquires concerning this decision should be directed to the undersigned at 571-272-7751. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

This application is being referred to the Technology Center, Art Unit 1613 for re-mailing the Office action of January 5, 2011. The period for reply will run from the mailing date of the Office action.

/Joan Olszewski/
Joan Olszewski
Petitions Examiner
Office of Petitions

Doc Code: PET.RELIEF
Document Description: Certification and Request for Disaster Relief

PTO/SB/425 (03-11)

CERTIFICATION AND REQUEST FOR RELIEF DUE TO EVENTS OF MARCH 11, 2011, IN JAPAN (Page 1 of 2)

Nonprovisional Application Number or Control Number (if applicable):	Patent Number (if applicable):
11/547,043	
First Named Inventor:	Title of Invention:
Naohiro Sonobe	ADSORBENT FOR AN ORAL ADMINISTRATION, AND AGENT

APPLICANT/PATENTEE/REEXAMINATION PARTY HEREBY CERTIFIES AND REQUESTS THE FOLLOWING FOR THE ABOVE-IDENTIFIED APPLICATION/PATENT/REEXAMINATION PROCEEDING.

1. FOR PATENT APPLICATIONS AND REEXAMINATION PROCEEDINGS PENDING IN THE USPTO AS OF MARCH 11, 2011, IN WHICH A COMMUNICATION FROM THE USPTO IS SOUGHT TO BE REMAILED:

   a. One or more inventors, an assignee, or a correspondence address (for the application/proceeding) is in an area of Japan affected by the earthquake and/or tsunami of March 11, 2011.

   b. A reply or response to an Office action (final, non-final, or other), a notice of allowance, or other Office notice (hereinafter collectively referred to as "Office communication") is outstanding on March 11, 2011.

   c. The statutory or non-statutory time period set for response has not yet expired.

   d. Withdrawal and reissuance of the Office communication is requested.

   e. It is acknowledged that if this request is not made within sufficient time so that withdrawal and reissuance of the Office communication occur prior to expiration of the statutory or non-statutory time period (as permitted to be extended under 37 CFR 1.136(a), or as extended under 37 CFR 1.550(c) or 1.956), this request may not be granted.

   f. The need for the reissuance of the Office communication was due to the effects of the earthquake and/or tsunami of March 11, 2011.

   g. This request is being sent via EFS-Web or by mail directed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

2. FOR PATENTEES WHO WERE UNABLE TO TIMELY PAY A PATENT MAINTENANCE FEE DURING THE SIX-MONTH GRACE PERIOD FOLLOWING THE WINDOW TO PAY THE MAINTENANCE FEE:

   a. The original window of time to pay the maintenance fee without the surcharge required by 37 CFR 1.20(h) expired on or after March 11, 2011.

   b. The delay in paying the fee was due to the effects of the earthquake and/or tsunami of March 11, 2011.

   c. The USPTO is requested to *sua sponte* waive the surcharge in 37 CFR 1.20(h) for paying a maintenance fee during the six-month grace period following the window to pay the maintenance fee.

   d. This request and payment of the maintenance fee during the six-month grace period following the window to pay the maintenance fee is being mailed to: Director of the United States Patent and Trademark Office, Attn: Maintenance Fee, 2051 Jamieson Avenue, Suite 300, Alexandria, VA 22314; or being transmitted via facsimile to: 571-273-6500.

CERTIFICATION AND REQUEST FOR RELIEF DUE TO EVENTS OF MARCH 11, 2011, IN JAPAN (Page 2 of 2)

3. FOR PATENTEES WHO NEED TO FILE A PETITION TO ACCEPT A DELAYED MAINTENANCE FEE PAYMENT UNDER 37 CFR 1.378(c):

   a. The maintenance fee payment was required to have been paid after March 10, 2011.

   b. A petition under 37 CFR 1.378(c) (using USPTO form PTO/SB/66 – Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(c))) is being promptly filed accompanied by the applicable maintenance fee payment (but not the surcharge under 37 CFR 1.20(i)).

   c. The delay in payment of the maintenance fee was due to the effects of the earthquake and/or tsunami of March 11, 2011.

   d. The USPTO is requested to *sua sponte* waive the surcharge in 37 CFR 1.20(i) for accepting a delayed maintenance fee payment.

   e. It is acknowledged that the petition to accept a delayed maintenance fee payment under 37 CFR 1.378(c) must be filed by March 11, 2012, in order to be entitled to a waiver of the surcharge under 37 CFR 1.20(i).

   f. It is acknowledged that the petition to accept a delayed maintenance fee payment under 37 CFR 1.378(c) must be filed within twenty-four months from the expiration date of the patent. *See* 35 U.S.C 41(c).

   g. This request and the petition to accept a delayed maintenance fee payment under 37 CFR 1.378(c) is being submitted via EFS-Web or by mail directed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

4. FOR NONPROVISIONAL PATENT APPLICATIONS FILED WITHOUT AN EXECUTED OATH OR DECLARATION OR PAYMENT OF THE BASIC FILING FEE, SEARCH FEE, AND/OR EXAMINATION FEE:

   a. The nonprovisional patent application was filed on or after March 11, 2011, and prior to April 12, 2011.

   b. The late filing of the oath or declaration or the basic filing fee, search fee, or examination fee was due to the effects of the earthquake and/or tsunami of March 11, 2011.

   c. The USPTO is requested to *sua sponte* waive the surcharge set forth in 37 CFR 1.16(f) for the late filing of the oath or declaration or basic filing fee, search fee, and/or examination fee.

   d. This request, together with the executed oath or declaration or the basic filing fee, search fee, or examination fee, as well as the reply to the Notice to File Missing Parts, is being submitted via EFS-Web or by mail directed to Mail Stop Missing Parts, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Signature	Date April 4, 2011
Name (Print/Typed) Joseph R. Snyder	Practitioner Registration Number 39,381

Note: *Signatures of all the inventors, § 1.41(b) applicants, or assignees of record of the entire interest or their representative(s), or reexamination requesters at the appeal stage are required in accordance with 37 CFR 1.33 and 11.18. Please see 37 CFR 1.4(d) for the form of the signature. If necessary, submit multiple forms for more than one signature, see below*.*

☐ *Total of _____ forms are submitted.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

KILPATRICK TOWNSEND & STOCKTON LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO CA 94111-3834

MAILED
APR 08 2011
OFFICE OF PETITIONS

In re Application of	:	
Sonobe et al.	:	
Application No. 11/547,043	:	DECISION ON PETITION
Filed: October 2, 2006	:	
Attorney Docket No. 92758-803049(28313-800US)	:	

This is a decision on the request filed April 5, 2011, seeking relief under the provisions of an announcement by the Under Secretary and Director of the United States Patent and Trademark Office on March 17, 2011, http://www.uspto.gov/patents/announce/japan_relief_2011mar17.pdf, providing relief to inventors and patent owners in areas affected by the earthquake and resulting tsunami of March 11, 2011.

The request for relief is **GRANTED**.

In the above-identified application, an Office action was mailed on February 17, 2011. The instant petition was filed prior to the expiration of the period for reply and the certifications for granting of relief are considered to be met by the submission of the request.

Additionally, the Power of Attorney and Change of Correspondence Address, is hereby accepted and made of record.

Telephone inquires concerning this decision should be directed to the undersigned at 571-272-7751. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

This application is being referred to the Technology Center, Art Unit 1616 for re-mailing the Office action of February 17, 2011. The period for reply will run from the mailing date of the Office action.

/Joan Olszewski/
Joan Olszewski
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450

MAILED

JAN 21 2011

OFFICE OF PETITIONS

Continental Teves, Inc.
One Continental Drive
Auburn Hills, Michigan 48346-1581

In re Application of	:	
Wolfgang THIEL et al.	:	DECISION GRANTING PETITION
Application No. 11/547,225	:	UNDER 37 CFR 1.137(b)
Filed: 6 August 2008	:	
Atty. Docket No.: TM031	:	

This is a decision on the petition under 37 CFR 1.137(b), filed 6 January 2011, to revive the above-identified application ("Application").

The petition is **GRANTED**.

The Application became abandoned for failure to reply in a timely manner to the non-final Office action mailed 4 March 2009 ("outstanding Office action"), which set a shortened statutory reply period of three (3) months. No extension of time under the provisions of 37 CFR 1.136(a) was obtained. The application thus became abandoned on 5 June 2009, with notification mailed 14 October 2009.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a Statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d).

The petition satisfies the conditions for revival pursuant to 37 CFR 1.137(b) by including (1) a reply in the form of a Response to the outstanding Office action, (2) a petition fee of $1620.00 (small entity), and (3) a Statement of unintentional delay. The reply to the outstanding Office action is accepted as having been unintentionally delayed.

There is no indication that the person signing the instant Petition was given a power of attorney or authorization of agent to prosecute the Application. Further, it is not apparent whether the signer of the Petition was in a position to have firsthand knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of the delay. *See,* 37 CFR 10.18(b) and Changes to Patent Practice and

Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (10 October 1997), 1203 Off. Gaz. Pat. Office 63, 103 (21 October 1997). In the event that such an inquiry has not been made, Petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, Petitioner must notify the Office.

General inquiries relating to this decision should be directed to Robert DeWitty, Petitions Examiner, Office of Petitions (571-272-6051), or, if unavailable, the undersigned at 571-272-7099.

The application file will be referred to Technology Center Art Unit 2839 for further action on the filed Response.

David Bucci
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MAILED
JUL 19 2011
OFFICE OF PETITIONS

WENDEROTH, LIND & PONACK L.L.P.
1030 15TH STREET, N.W.
SUITE 400 EAST
WASHINGTON DC 20005-1503

In re Patent No. 7,923,090	:	
Issue Date: April 12, 2011	:	
Application No. 11/547,265	:	DECISION ON PETITION
Filed: October 04, 2006	:	
Attorney Docket No. 2006_1610A	:	

This is a decision on the petition filed May 24, 2011, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **GRANTED**.

A certificate of correction was issued on June 21, 2011.

Telephone inquiries concerning this decision may be directed to Michelle R. Eason at (571) 272-4231. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

Thurman K. Page
Petitions Examiner
Office of Petitions

[1] *See* MPEP 1309, subsection II; and Official Gazette of June 22, 2004.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 12/27/11

TO SPE OF : ART UNIT 2827

SUBJECT : Request for Certificate of Correction for Appl. No.: 11547304 Patent No.: 7499305

CofC mailroom date: 12/15/11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580
You can fax the Directors/SPE response to 571-273-3421

Note: **Should the changes in fig. 6B be approved?**

Lamonte Newsome

Certificates of Correction Branch

571-272-3421

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

☒ **Approved** — **All** changes apply.

☐ **Approved in Part** — Specify below which changes **do not** apply.

☐ **Denied** — State the reasons for denial below.

Comments: _____

_____

_____

_____

_____

_____ 2827

SPE **Art Unit**

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FREDRIKSON & BYRON, P.A.
INTELLECTUAL PROPERTY GROUP
200 SOUTH SIXTH STREET, SUITE 4000
MINNEAPOLIS MN 55402

MAILED

JUN 08 2011

OFFICE OF PETITIONS

In re Application of :
HSU, et al :
Application No. 11/547,335 : DECISION ON PETITION
Filed: July 30, 2008 : TO WITHDRAW
Attorney Docket No. 43305.12.0.63.2 : FROM RECORD
:

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed April 27, 2011.

The request is **NOT APPROVED.**

The request to withdraw from record cannot be approved because the change of correspondence address cannot be accepted. The Office will either change the correspondence address of record to the most current address information provided for an assignee of the entire interest who properly became of record under 37 CFR 3.71 or, if no assignee of the entire interest has properly been made of record under 37 CFR 3.71, the most current address information provided for the first named inventor. 37 CFR 3.71(c) states:

> *"An assignee becomes of record either in a national patent application or a reexamination proceeding by filing a statement incompliance with § 3.73(b) that is signed by a party who is authorized to act on behalf of the assignee."*

Therefore, as there is currently no updated Statement under 37 CFR 3.73(b) with the current assignee information of record in the instant application, the Office cannot change the correspondence address as indicated on the Request to Withdraw at this time.

All future communications from the Office will continue to be directed to the above-identified address until otherwise properly notified by the applicant.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272- 6735.

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

cc: DERMATRENDS, INC.
3109 WEST 50TH STREET, #337
MINNEAPOLIS, MN 55410

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FREDRIKSON & BYRON, P.A.
INTELLECTUAL PROPERTY GROUP
200 SOUTH SIXTH STREET, SUITE 4000
MINNEAPOLIS MN 55402

MAILED

JUL 15 2011

OFFICE OF PETITIONS

In re Application of :
HSU, et al : **CORRECTED**
Application No. 11/547,335 : DECISION ON PETITION
Filed: July 30, 2008 : TO WITHDRAW
Attorney Docket No. 43305.12.0.63.2 : FROM RECORD
:

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed April 27, 2011.

The request is **APPROVED.**

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. The Office requires the practitioner(s) requesting withdrawal to certify that he, she, or they have: (1) given reasonable notice to the client, prior to the expiration of the response period, that the practitioner(s) intends to withdraw from employment; (2) delivered to the client or a duly authorized representative of the client all papers and property (including funds) to which the client is entitled; and (3) notified the client of any responses that may be due and the time frame within which the client must respond, pursuant 37 CFR 10.40(c).

The request was signed by Philip M. Goldman on behalf of the attorneys of record associated with Customer No. 22859

The attorneys of record associated with Customer No. 22859 have been withdrawn.

Applicant is reminded that there is no attorney of record at this time.

The correspondence address of record has been changed and the new correspondence address is the address indicated below until otherwise properly notified.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

cc: DERMATRENDS, INC.
3109 WEST 50TH STREET, #337
MINNEAPOLIS, MN 55410

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/547,335	07/30/2008	Tsung-Min Hsu	43305.12.0.63.2

CONFIRMATION NO. 2003

POWER OF ATTORNEY NOTICE

22859
FREDRIKSON & BYRON, P.A.
INTELLECTUAL PROPERTY GROUP
200 SOUTH SIXTH STREET, SUITE 4000
MINNEAPOLIS, MN 55402

OC000000048787767

Date Mailed: 07/14/2011

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 04/27/2011.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

/dcgoodwyn/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

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120 WHITE PLAINS ROAD, SUITE 300
TARRYTOWN NY 10591

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JUL 21 2011

OFFICE OF PETITIONS

In re Patent of Cravey et al. :
Patent No. 7,942,941 :
Issue Date: May 17, 2011 :
Application No. 11/547,349 :
371(c) Date: September 29, 2006 :
Attorney Docket No. ACA6331P1US :

DECISION ON REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT

This is a decision on the "Request for Reconsideration of Patent Term Adjustment" filed June 23, 2011, which requests the determination of patent term adjustment indicated on the patent be corrected from three hundred forty-nine (349) days to seven hundred forty-three (743) days.

The request for reconsideration of the patent term adjustment indicated on the patent is **dismissed**.

The Office previously determined:

1. The total period of delay under 37 C.F.R. § 1.703(a) ("A Delay") is 397 days;
2. The period of delay under 37 C.F.R. § 1.703(b) ("B Delay") is 84 days,
3. The periods of A Delay and B Delay do not overlap,
4. The total period of delay under 37 C.F.R. § 1.704 ("Applicant Delay") is 132 days; and
5. The proper patent term adjustment is 349 days, which is the sum of 397 days of A Delay and 84 days of B Delay reduced by 0 days of overlap and 132 days of Applicant Delay.

Patentees contend:

1. The correct period of B Delay is 747 days,
2. The period of A Delay and B Delay overlap by 128 days, and
3. The correct patent term adjustment is 743 days, which is the sum of 397 days of A Delay and 747 days of B Delay reduced by 128 days of overlap and 132 days of Applicant Delay.

B Delay

The period of B Delay in this case is the number of days beginning on the day after the date three years after the national stage commenced and ending on the date the patent issued excluding any time consumed by continued examination or appellate review. *See* 37 C.F.R. §§ 1.703(b)(1) and 1.703(b)(4).

The number of days beginning September 23, 2009, the day after the date three years after the national stage commenced, and ending May 17, 2011, the date the patent issued, is 595 days.

The number of days beginning April 23, 2010, the date a request for continued examination ("RCE") was filed, and ending May 17, 2011, the date the patent issued, is 390 days.

The number of days beginning December 23, 2009, the date a Notice of Appeal was filed, and ending April 22, 2010, the day before the date the RCE was filed, is 121 days.

The period of B Delay is 84 days (595 - 390 - 121).

Overlap Between the Periods of A Delay and B Delay

Patentees contend the period of A Delay and B Delay overlap by 128 days

The period of B Delay does not include any dates prior to September 23, 2009, the day after the date three years after the national stage commenced. The entire period of A Delay took place prior to September 23, 2009. Specifically, the period of A Delay consists solely of the 397-day time period beginning November 30, 2007, and ending December 30, 2008. Therefore, the periods of A Delay and B Delay do not overlap.

Conclusion

The period of A Delay is 397 days.

The period of B Delay is 84 days.

The periods of A Delay and B Delay do not overlap.

The period of Applicant Delay is 132 days.

The patent term adjustment is 349 days, which is the sum of 397 days of A Delay and 84 days of B Delay reduced by 132 days of Applicant Delay.

In view of the prior discussion, the patent term adjustment determination of 349 days set forth on the patent is correct.

Submission of the $200.00 fee set forth in 37 C.F.R. § 1.18(e) is acknowledged. No additional fee is required.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Steven Brantley at (571) 272-3203.

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

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Paper No.

CONNOLLY BOVE
LODGE & HUTZ, LLP
P O BOX 2207
WILMINGTON DE 19899

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AUG 09 2010

OFFICE OF PETITIONS

In re Application of :
Dudits et al. :
Application No. 11/547,395 : ON APPLICATION FOR
Filed: October 20, 2006 : PATENT TERM ADJUSTMENT
Atty Docket No. 14546-00003-US :

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(B) filed January 27, 2010. Applicant requests this correction in part to reflect the delay due to the Office taking in excess of three years to issue the patent. Otherwise, applicant requests this correction on the basis that the patent term adjustment to date has not been calculated properly for this application as a national stage of an international application.

To the extent the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee[1].

To the extent that applicant otherwise requests reconsideration of the patent term adjustment at the time of the mailing of the notice of allowance, the application for patent term adjustment is **DISMISSED**.

Applicant is advised that the Office has not failed to recognize that October 2, 2006 is the date of commencement of this application. The date of commencement of the application is not used in calculating patent term adjustment until issuance when the period of Office delay is calculated for the Office taking

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[1] For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

in excess of three years to issue the patent. On the other hand, the date of completion (or fulfillment of the requirements of 371) of this application is October 20, 2006. (See Notice of Acceptance mailed July 22, 2008). This date was properly used in calculating the period of Office delay pursuant to 37 CFR §§1.702(a)(1) and 1.703(a)(1).

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

20 SEP 2010

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HULSEY IP INTELLECTUAL PROPERTY LAWYERS, P.C.
919 Congress Avenue, Suite 919
AUSTIN TX 78701

In re Application of :
GISSLER et al. :
Application No.: 11/547,403 :
Filing Date: 02 October 2006 : DECISION
Attorney's Docket No.: IACT001US1 :
For: METHOD AND SYSTEM FOR PROCESS-: ING XML-TYPE TELECOMMUNICATIONS : DOCUMENTS

This application is before the PCT Legal Office concerning matters arising under 35 U.S.C. 371.

BACKGROUND

On 31 March 2006, applicant filed papers in the United States Receiving Office (RO/US) which were assigned international application No. PCT/US06/12105.

On 26 April 2006, the RO/US mailed a Notification Concerning Payment of Prescribed Fees (Form/PCT/RO/102) indicating that a balance of fees was required.

On 09 June 2006, the RO/US mailed an Invitation to Pay Prescribed Fees Together with Late Payment Fee (Form/PCT/RO/133) indicating that a late payment fee along with filing fees was required within one month. The notice stated that failure to pay the total amount due within the time limit given may result in the International application being considered withdrawn by the RO/US.

Thereafter, on 21 July 2006, a Notification that International Application Considered to be Withdrawn (Form PCT/RO/117) was mailed to applicant indicating that the international application was withdrawn for failure to pay the prescribed fees.

On 02 October 2006, applicant filed, *inter alia*, a transmittal letter for national stage entry of the international application PCT/US06/12105 and the basic national stage filing fee.

On 22 January 2007, applicant filed Petition to Receive Date Under 37 CFR 1.182 in international application PCT/US06/12105. A review of the international application file revealed that the application was withdrawn for failure to pay the prescribed fees within the prescribed time period. On 26 March 2007, a decision was mailed affirming withdrawal of the application for failure to pay the prescribed fees.

Thereafter, on 16 August 2010, a Notification of Acceptance Under 35 U.S.C. 371 and 37 CFR 1.495 (Form PCT/DO/EO/903) was erroneously mailed in U.S. application 11/547,403.

DISCUSSION

The PCT international application was considered withdrawn on 21 July 2006 prior to the filing of the U.S. national stage filing on 02 October 2006 and the fulfillment of the requirements under 35 U.S.C. 371. In accord with 35 U.S.C. 366, given the withdrawn status of the international application PCT/US06/12105, a filing of the U.S. national stage application under 35 U.S.C. 371 for PCT/US06/12105 was not a proper filing. The Notification of Acceptance was erroneously mailed and is hereby **VACATED**.

In view of the above, it is proper to treat the initial filing as a filing under 35 U.S.C. 111(a). The specification filed on 02 October 2006 met the requirements for granting a filing date for a filing under 35 U.S.C. 111(a). Accordingly, it is proper to accept the papers as a filing under 35 U.S.C. 111(a) with an filing date of 02 October 2006.

CONCLUSION

In light of the withdrawal of the international application PCT/US06/12105, the filing of a U.S. national stage application was not proper. Therefore, the 16 August 2010 Notification of Acceptance is hereby **VACATED**.

The following fees will be refunded to applicant: the basic national fee of $150 (fee code 2631), $100 examination fee (fee code 2633), $50 search fee (fee code 2641),$100 independent claims fee (fee code 2614), $400 extra claims fees (fee code 2615), and $65 surcharge (fee code 2617).

This application is being forwarded to the International Division for removal of the papers communicated from the International Bureau to the United States of America.

The papers filed on 02 October 2006 will be treated as a U.S. application filed under 35 U.S.C. 111(a) and the application will be forwarded to Office of Initial Patent Examination (OIPE) for processing as a regular national application under 35 U.S.C. 111(a) with a filing date of 02 October 2006.

/Cynthia M. Kratz/
Cynthia M. Kratz
Attorney Advisor
PCT Legal Office
Office of PCT Legal Administration

Telephone: (571) 272-3286
Facsimile: (571) 273-0459

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2040 Dow Center
Midland MI 48641

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NOV 08 2010

PCT LEGAL ADMINISTRATION

In re Application of	:	DECISION ON
Dinega et al	:	
Application No.: 11/547,461	:	PETITION UNDER
Filing Date: 04 October 2006	:	
Attorney's Docket No.: 63434A	:	
For: PLASMA ENHANCED... METAL OXIDE	:	37 CFR 1.78(a)(6)

This is in response to applicant's communication "PETITION UNDER 37 CFR 1.78(a)" filed 12 March 2010 to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of the prior-filed provisional application set forth in the concurrently filed amendment.

The petition is **DISMISSED**.

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

(1) the reference required by 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(5)(i)to the prior-filed 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 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The commissioner may require additional information where there is a question whether the delay was unintentional.

The instant pending nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed provisional application is submitted after expiration of the period specified in 37 CFR 1.78(a)(5)(ii). Therefore, this is a proper petition under 37 CFR 1.78(a)(6).

A reference to the prior-filed provisional application has been included in an amendment to the first sentence of the specification following the title.

The petition complies with items (2) and (3) but not item (1) under 37 CFR 1.78(a)(6).

(1) With regard to item (1), the amendment is not acceptable as drafted since it improperly incorporates by reference the prior-filed application. An incorporation by reference statement added after an application's filing date is not effective because no new matter can be added to an application after its filing date (*see* 35 U.S.C. § 132(a)). If an incorporation by reference statement is included in an amendment to the specification to add a benefit claim under 35 U.S.C. § 120 after the filing date of the application, the amendment would not be proper. When a benefit claim under 35 U.S.C. § 120 is submitted after the filing of an application, the reference to the prior application cannot include an incorporation by reference statement of the prior application. *See* Dart Industries v. Banner, 636 F.2d 684, 207 USPQ 273 (C.A.D.C. 1980). *Note* MPEP §§ 201.06(c) and 608.04(b).

(2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and

(3) the petition contains a proper statement of unintentional delay.

Any inquiries concerning this decision may directed to Rafael Bacares at (571) 272-3276. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

Any further correspondence with respect to this matter may be filed electronically via EFS-Web selecting the document description "Petition for review and processing by the PCT Legal Office" or by mail addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Bryan Lin
Legal Examiner
Office of PCT Legal Administration

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SIEMENS CORPORATION
INTELLECTUAL PROPERTY DEPARTMENT
170 WOOD AVENUE SOUTH
ISELIN, NJ 08830

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SEP 23 2010

OFFICE OF PETITIONS

In re Application of :
Manfred Hutt, et al. :
Application No.: 11/547,519 : ON PETITION
Filed: October 2, 2006 :
Attorney Docket No.: 2004P14220WOUS :

This is a decision on the petition, filed September 22, 2010, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is not signed by an attorney of record. Nevertheless, in accordance with 37 CFR 1.34, the signature of Mr. Ralph G. Fischer appearing on the correspondence shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party on whose behalf he acts. If Mr. Fischer desires to receive future correspondence regarding this file, the appropriate power of attorney documents must be submitted. A courtesy copy of this decision is being mailed to petitioner herein. However, until otherwise instructed, all future correspondence regarding this application file will be directed solely to the above-noted correspondence address of record.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on September 10, 2010, cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries relating to this decision should be directed to the undersigned at (571) 272-3204.

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[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.*

The application is being referred to Technology Center AU 2617 for further processing of the Request for Continued Examination (RCE) under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement (IDS).

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

cc: RALPH G. FISCHER
BUCHANAN INGERSOLL & ROONEY PC
ONE OXFORD CENTRE
301 GRANT STREET, 20TH FLOOR
PITTSBURGH, PA 15219-1410

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/547,675	10/06/2006	Samuel Norbert Breit	3781-18	9867

23117 7590 11/08/2011

NIXON & VANDERHYE, PC
901 NORTH GLEBE ROAD, 11TH FLOOR
ARLINGTON, VA 22203

EXAMINER	
GAMETT, DANIEL C	
ART UNIT	PAPER NUMBER
1647	
MAIL DATE	DELIVERY MODE
11/08/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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NOV 0 8 2011

In re Application of	:	
Samuel Norbert Breit, et al.	:	NOTICE OF WITHDRAWAL
Serial No. 11/547675	:	FROM ISSUE
Filed: October 6, 2006	:	UNDER 37 CFR 1.313(b)
For: METHOD FOR MODULATING APPETITE	:	

The above-identified application is withdrawn from issue after payment of the issue fee due to a mistake on the part of the Office. See 37 CFR 1.313(b).

The above-identified application is hereby withdrawn from issue.

The issue fee is refundable upon written request. If, however, the application is again found allowable, the issue fee can be applied toward payment of the issue fee in the amount identified on the new Notice of Allowance and Issue Fee Due upon written request. This request and any balance due must be received on or before the due date noted in the new Notice of Allowance in order to prevent abandonment of the application.

Telephone inquiries should be directed to the SPE, Jeffrey Stucker (571) 272-0911.

The above-identified application is being forwarded to the examiner for prompt appropriate action, including notifying applicant of the new status of this application.

George C. Elliott, Director
Technology Center 1600

NIXON & VANDERHYE, PC
901 NORTH GLEBE ROAD
11TH FLOOR
ARLINGTON, VA 22203

cc: Publications, Scanning

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NOV 22 2010

OFFICE OF PETITIONS

OLIFF & BERRIDGE, PLC
P.O. BOX 320850
ALEXANDRIA, VA 22320-4850

In re Application of :
Tsunenobu Kimoto et al :
Application No. 11/547,692 : ON PETITION
Filed: October 6, 2006 :
Attorney Docket No. 129691

This is a decision on the petition, filed November 22, 2010 under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on October 15, 2010 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to Irvin Dingle at (571) 272-3210.

This matter is being referred to Technology Center AU 1714 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

/Irvin Dingle/
Irvin Dingle
Petitions Examiner
Office of Petitions

[1] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above. Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

UNITED STATES PATENT AND TRADEMARK OFFICE

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GARRETT & DUNNER
LLP
901 NEW YORK AVENUE NW
WASHINGTON DC 20001-4413

MAILED

DEC 16 2010

OFFICE OF PETITIONS

In re Patent No. 7,741,085
Otsuka, et al.
Application No. 11/547,729
Issue Date: June 22, 2010
Filed: October 6, 2006
Attorney Docket No. REDL-010

: DECISION ON
: REQUEST FOR RECONSIDERATION
: of PATENT TERM ADJUSTMENT
: and
: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

This is a decision on the petition under 37 CFR 1.705(d), filed August 20, 2010, requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the patent is extended or adjusted from seven hundred thirty-three (733)days as indicated on the patent to seven hundred thirty-five (735) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by seven hundred thirty-five (735) days is **GRANTED**.

Patentees are correct that the amount of days over 36 months from the filing date of the application until the issue date of the patent was not included in the "B" delay period. The over three year period began on October 9, 2009 and ended on June 22, 2010 (the patent issue date), and is 257 days. See 35 U.S.C. 154(b)(1)(B)(i).

In view thereof, the correct number of days of patent term adjustment is seven hundred thirty-five (735) days (478 days of "A" delay and 257 days of "B" delay, reduced by 0 days of Applicant delay).

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificate of Corrections Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **seven hundred thirty-five (735)** days.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Cliff Congo, at (571) 272-3207.

Anthony Knight
Director
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

DRAFT CERTIFICATE OF CORRECTION

PATENT : 7,741,085 B2

DATED : **June 22, 2010**

INVENTOR(S) : Otsuka et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 733 days.

Delete the phrase "by 733 days" and insert – by 735 days--

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DLA PIPER LLP (US)
2000 UNIVERSITY AVENUE
EAST PALO ALTO CA 94303-2248

MAILED

SEP 24 2010

OFFICE OF PETITIONS

In re Application of :
Xiaojun YANG, et al :
Application No. 11/547,733 : DECISION ON PETITION
Filed: January 16, 2007 :
Attorney Docket No. 348162-991540 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 29, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely pay the issue and publication fees on or before March 8, 2009, as required by the Notice of Allowance and Fee(s) Due, mailed December 8, 2009, which set a statutory period for reply of three (3) months. Accordingly, the application became abandoned on March 9, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1510 and publication fee of $300; (2) the petition fee of $1620; and (3) a proper statement of unintentional delay.

37 CFR 1.137(b)(3) requires a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." Since the statement appearing in the petition varies from the language required by 37 CFR 1.137(b)(3), the statement is being construed as the required statement. Petitioner must notify the Office if this is **not** a correct reading of the statement appearing in the petition.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

This application is being referred to the Office of Data Management for processing into a patent.

/DCG/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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FOLEY & LARDNER LLP
150 EAST GILMAN STREET
P.O. BOX 1497
MADISON WI 53701-1497

MAILED

JUL 25 2011

OFFICE OF PETITIONS

In re Application
Martti Moisio et al.
Application No. 11/547,839
Filed: October 5, 2006
Attorney Docket No. 088245-1054

: DECISION ON APPLICATION
: FOR PATENT TERM ADJUSTMENT

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT FOR PATENT APPLICATION UNDER 37 C.F.R. §1.705(b) filed July 12, 2011. Applicant requests that the determination of patent term adjustment be corrected from 322 to 1053 days. Applicant requests this correction in part on the basis that the Office will take in excess of three years to issue this patent and is considered in light of the recent court decision in light of the Court of Appeals for the Federal Circuit's decision in *Wyeth v. Kappos*, 2009-1120 (Fed. Cir. 1-7-2010).

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within three years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentees are entitled to for Office failure to issue the patent within three years. See 37 CFR 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under 37 CFR 1.702(a)(4) or applicant delay under 37 CFR 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office cannot make a determination on the patent term adjustment relating to those provisions until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss such a request as premature.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicants are advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicants must timely file an application for patent term adjustment prior to the payment of the issue fee.[1]

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within two months after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3212.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

[1] For example, if applicants dispute both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed, and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicants must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the § 1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

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Stainbrook & Stainbrook, LLP
412 Aviation Boulevard
Suite H
Santa Rosa, CA 95403

MAILED
OCT 03 2011
PCT LEGAL ADMINISTRATION

In re Application of
BROWNING et al.
Application No.: 11/547,882
PCT No.: PCT/US05/11859
Int. Filing Date: 08 April 2005
Priority Date: 08 April 2004
Attorney Docket No.: 00713.P2US
For: SNAP FIT PULTRUSION FOR HOUSING ELEMENTS

DECISION ON PETITION

This application is before the Office of PCT Legal Administration for issues arising under 35 U.S.C. 371. Additionally, this decision is issued in response to the declarations submitted under 37 CFR 1.42.

BACKGROUND

On 08 April 2005, applicants filed international application PCT/US05/11859, which claimed a priority date of 08 April 2004. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee in the United States was to expire 30 months from the priority date, 08 October 2006.

On 04 October 2006, applicants filed a transmittal for entry into the national stage in the United States, which accompanied by, inter alia, the requisite basic national fee as required by 35 U.S.C. 371(c)(1); an application data sheet; and a declaration.

On 05 October 2007, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C. 371 AND 37 CFR 1.494 OR 1.495" (Form PCT/DO/EO/903) which set forth a 35 U.S.C. 371 completion date of 04 October 2006.

On 25 October 2011 and 15 May 2011, applicant submitted supplemental declarations.

DISCUSSION

A. Issues Arising Under 35 U.S.C. 371

A review of the application file and other United States Patent and Trademark Office records reveals that the requirements of 35 U.S.C. 371(c) for entry into the national stage in the United States of America have not been completed as indicated in the Notification of Acceptance mailed by the DO/EO/US on 05 October 2007. Specifically, the oath or declaration requirement under 35 U.S.C. 371(c)(4) for entry into the national stage in the United States of America has not been properly executed under 37 CFR 1.497 and 37 CFR 1.42. As such, the Notification Of Acceptance (Form PCT/DO/EO/903) and filing receipt mailed 05 October 2007, based as they were on applicants' purported submission of an acceptable declaration under 37 CFR 1.497, are appropriately vacated.

B. Submission Under 37 CFR 1.42

37 CFR 1.42 *When the Inventor is Dead*, states, in part:

> In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent.

Pursuant to 37 CFR 1.497(b)(2) states the following:

> > (2) If the person making the oath or declaration or any supplemental oath or declaration is not the inventor (§§ 1.42, 1.43, or § 1.47) the oath or declaration shall state the relationship of the person to the inventor, and, upon information and belief, the facts which the inventor would have been required to state. If the person signing is the legal representative of a deceased inventor, the oath or declaration shall also state that the person is a legal representative and the citizenship, residence, and mailing address of the legal representative.

The declaration submitted on 19 May 2011 was executed by James M. Dombrowski as "assignee" of deceased inventor, Brandt W. Goldsworthy. However, the declaration does not state that James M. Dombrowski is the "legal representatives" or "are all of the heirs of the deceased inventor." Further, the declaration failed identify the (former) citizenship of the deceased inventor. Accordingly, the declaration fails to identify the proper relationship under 37 CFR 1.497(b)(2).[1]

---

[1]It is noted that the 04 October 2006 declaration failed to identify the deceased inventor pursuant to 37 CFR 1.497(a)(3). The 25 February 2011 declaration failed to identify James M. Dombrowski as the legal representative (executor, administrator, etc.) of the deceased inventor and did not provide the former citizenship of the deceased inventor.

Thus, in order for the declaration to be acceptable under 37 CFR 1.42 , 37 CFR 1.497(b)(2) requires that the declaration both "state the relationship of the person to the inventor, and, upon information and belief, the facts which the inventor would have been required to state" and "state the person is a legal representative and the citizenship, residence and mailing address of the legal representative." In view of the deficiencies noted above, it would not be appropriate to accept the declaration(s) under 37 CFR 1.42 at this time

By way of guidance, any renewed submission should be accompanied by a declaration which clearly identifies the entire correct inventive entities (Ray Browning and Brandt W. Goldsworthy), provides the required information for the deceased inventor (former citizenship), identifies Brandt W. Goldsworthy's legal representative, is signed by said legal representative of his behalf, and provides the required data for the legal representative.

CONCLUSION

The submission under 37 CFR 1.42 is REFUSED.

Since the declaration is not in compliance with 37 CFR 1.42 and 1.497(b)(2), the Notification of Acceptance of Application mailed 08 October 2008 is hereby VACATED.

Applicants have TWO (2) MONTHS from the mailing date of this Decision to submit a proper response under 37 CFR 1.42. Failure to provide a proper and timely response will result in abandonment. A proper response must include an acceptable declaration executed by either the legal representative (executor) of the deceased inventor or, if no legal representative has been appointed, all of the deceased inventor's heirs. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter may be filed electronically via EFS-Web selecting the document description "Petition for review and processing by the PCT Legal Office" or by mail addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Anthony Smith
Attorney-Advisor
Office of PCT Legal Administration
Tel: (571) 272-3298
Fax: (571) 273-0459

UNITED STATES PATENT AND TRADEMARK OFFICE

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Stainbrook & Stainbrook, LLP
412 Aviation Boulevard
Suite H
Santa Rosa, CA 95403

MAILED
JAN 27 2012
PCT LEGAL ADMINISTRATION

In re Application of
BROWNING et al.
Application No.: 11/547,882
PCT No.: PCT/US05/11859
Int. Filing Date: 08 April 2005
Priority Date: 08 April 2004
Attorney Docket No.: 00713.P2US
For: SNAP FIT PULTRUSION FOR HOUSING ELEMENTS

DECISION ON PETITION

In a decision mailed by this Office on 03 October 2011, the declaration filed by applicant on behalf of deceased inventor W. Brandt Goldsworthy was dismissed for failure to include all the information required under 37 CFR 1.497.

On 17 January 2012, applicant filed a response to the previous communication that was accompanied by a revised declaration. The declaration submitted on 17 January 2012 identifies the deceased inventor and states the deceased inventor's country of citizenship, is signed by Lois Goldsworthy as the "legal representative," states his/her relationship to the deceased (i.e., legal representative), and provides Lois Goldsworthy's country of citizenship and residency. Accordingly, the declaration complies with the requirements of 37 CFR 1.497(b)(2) and 37 CFR 1.42.

The request for status under 37 CFR 1.42 is **GRANTED**.

The application will be forwarded to the National Stage Processing Branch of the Office of PCT Operations for further processing in accordance with this decision.

Anthony Smith
Attorney-Advisor
Office of PCT Legal Administration
Tel: (571) 272-3298
Fax: (571) 273-0459

UNITED STATES PATENT AND TRADEMARK OFFICE

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REMENICK PLLC
1025 THOMAS JEFFERSON STREET, NW
WASHINGTON DC 20007

MAILED

FEB 09 2011

OFFICE OF PETITIONS

In re Application of :
GLATKOWSKI, et al :
Application No. 11/547,903 : DECISION ON PETITION
Filed: October 1, 2007 :
Docket No. 8125.021.US :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 23, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, May 28, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on August 29, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $1620; and (3) and the required statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

This application is being referred to Technology Center AU 1796 for appropriate action by the Examiner in the normal course of business.

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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WEINGARTEN SCHURGIN GAGNEBIN & LEBOVICI LLP
TEN POST OFFICE SQUARE
BOSTON, MA 02109

MAILED

APR 18 2011

OFFICE OF PETITIONS

In re Application of	:	
Shirish Ranjit	:	
Application No. 11/547,938	:	DECISION ON PETITION
Filed: October 6, 2006	:	TO WITHDRAW
Attorney Docket No. RNJT-001XX	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed March 18, 2011.

The request is **APPROVED**.

The request was signed by Gordon R. Moriarty on behalf of the practitioners of record associated with Customer Number 00207.

Applicant is reminded that there is no attorney of record at this time.

All future correspondence will be directed to inventor Shirish Ranjit at the address indicated below.

Telephone inquiries concerning this decision should be directed to Irvin Dingle at (571) 272-3210.

Irvin Dingle
Petitions Examiner
Office of Petitions

cc: Shirish Ranjit
63 Slade Street
Belmont, MA 02478

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/547,938	10/06/2006	Shirish Ranjit	RNJT-001XX

CONFIRMATION NO. 5211

207
WEINGARTEN, SCHURGIN, GAGNEBIN & LEBOVICI LLP
TEN POST OFFICE SQUARE
BOSTON, MA 02109

POWER OF ATTORNEY NOTICE

OC000000047102810

Date Mailed: 04/18/2011

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 03/18/2011.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

/idingle/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/547,938	10/06/2006	Shirish Ranjit	RNJT-001XX

CONFIRMATION NO. 5211

Shirish Ranjit
63 Slade Street
Belmont, MA 02478

POA ACCEPTANCE LETTER

OC000000047102892

Date Mailed: 04/18/2011

NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 03/18/2011.

The Power of Attorney in this application is accepted. Correspondence in this application will be mailed to the above address as provided by 37 CFR 1.33.

/idingle/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

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FREDRIKSON & BYRON, P.A.
INTELLECTUAL PROPERTY GROUP
200 SOUTH SIXTH STREET, SUITE 4000
MINNEAPOLIS MN 55402

MAILED

JUN 08 2011

OFFICE OF PETITIONS

In re Application of :
HSU, et al :
Application No. 11/547,987 : DECISION ON PETITION
Filed: August 17, 2007 : TO WITHDRAW
Attorney Docket No. 43305.12.0.64.2 : FROM RECORD
:

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed April 27, 2011.

The request is **NOT APPROVED.**

The request to withdraw from record cannot be approved because the change of correspondence address cannot be accepted. The Office will either change the correspondence address of record to the most current address information provided for an assignee of the entire interest who properly became of record under 37 CFR 3.71 or, if no assignee of the entire interest has properly been made of record under 37 CFR 3.71, the most current address information provided for the first named inventor. 37 CFR 3.71(c) states:

> *"An assignee becomes of record either in a national patent application or a reexamination proceeding by filing a statement incompliance with § 3.73(b) that is signed by a party who is authorized to act on behalf of the assignee."*

Therefore, as there is currently no updated Statement under 37 CFR 3.73(b) with the current assignee information of record in the instant application, the Office cannot change the correspondence address as indicated on the Request to Withdraw at this time.

All future communications from the Office will continue to be directed to the above-identified address until otherwise properly notified by the applicant.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272- 6735.

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

cc: DERMATRENDS, INC.
3109 WEST 50TH STREET, #337
MINNEAPOLIS, MN 55410

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INTELLECTUAL PROPERTY GROUP
200 SOUTH SIXTH STREET, SUITE 4000
MINNEAPOLIS MN 55402

MAILED

AUG 22 2011

OFFICE OF PETITIONS

In re Application of	:	
HSU, et al	:	
Application No. 11/547,987	:	DECISION ON PETITION
Filed: August 17, 2007	:	TO WITHDRAW
Attorney Docket No. 43305.12.0.64.2	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed August 12, 2011.

The request is **NOT APPROVED.**

A review of the file record indicates that Philip M. Goldman does not have power of attorney in this patent application. See 37 C.F.R. § 10.40. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is not applicable.

The Office will no longer approve requests from practitioners to withdraw from applications where the requesting practitioner is acting, or has acted, in a representative capacity pursuant to 37 CFR 1.34. In these situations, the practitioner is responsible for the correspondence the practitioner files in the application while acting in a representative capacity. As such, there is no need for the practitioner to obtain the Office's permission to withdraw from representation. However, practitioners acting in a representative capacity, like practitioners who have a power of attorney in the application, remain responsible for noncompliance with 37 CFR 1.56, as well as 37 CFR 10.18, with respect to documents they file.

A copy of the Power of Attorney filed August 12, 2011 and signed July 6, 2005, was not entered because the Statement under 37 CFR 3.73(b) submitted with the Request to Withdraw filed August 12, 2011, identifies an incorrect application number. Further, clarification is needed as to the current assignee's name. In this regard, the name of the assignee identified on the Statement under 3.73(b) is Technology Recovery Systems, LLC, however, the chain of title identifies Dermatrend, Inc. In addition, it should be noted that the Customer No. indicated on the Power of Attorney filed August 12, 2011, is the same as the attorneys attempting to withdraw from record, clarification is needed.

All future communications from the Office will continue to be directed to the above-identified address until otherwise properly notified by the applicant.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

FREDRIKSON & BYRON, P.A.
INTELLECTUAL PROPERTY GROUP
200 SOUTH SIXTH STREET, SUITE 4000
MINNEAPOLIS MN 55402

MAILED

SEP 26 2011

OFFICE OF PETITIONS

In re Application of :
HSU, et al :
Application No. 11/547,987 : DECISION ON PETITION
Filed: August 17, 2007 : TO WITHDRAW
Attorney Docket No. 43305.12.0.64.2 : FROM RECORD
:

This is a decision on the Request for Reconsideration filed September 1, 2011 and the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed September 7, 2011.

The request is **APPROVED.**

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. The Office requires the practitioner(s) requesting withdrawal to certify that he, she, or they have: (1) given reasonable notice to the client, prior to the expiration of the response period, that the practitioner(s) intends to withdraw from employment; (2) delivered to the client or a duly authorized representative of the client all papers and property (including funds) to which the client is entitled; and (3) notified the client of any responses that may be due and the time frame within which the client must respond, pursuant 37 CFR 10.40(c).

The request was signed by Philip M. Goldman on behalf of the attorneys of record associated with Customer No. 22859

The attorneys of record associated with Customer No. 22859 have been withdrawn.

Applicant is reminded that there is no attorney of record at this time.

The correspondence address of record has been changed and the new correspondence address is the address indicated below until otherwise properly notified.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

cc: DERMATRENDS, INC.
3109 WEST 50TH STREET, #337
MINNEAPOLIS, MN 55410

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/547,987	08/17/2007	Tsung-Min Hsu	43305.12.0.64.2

CONFIRMATION NO. 9297

POWER OF ATTORNEY NOTICE

22859
FREDRIKSON & BYRON, P.A.
INTELLECTUAL PROPERTY GROUP
200 SOUTH SIXTH STREET, SUITE 4000
MINNEAPOLIS, MN 55402

OC000000049905246

Date Mailed: 09/19/2011

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 09/07/2011.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

/dcgoodwyn/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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BEST MEDICAL INTERNATIONAL, INC.
ATTN: RAY
7643 FULLERTON ROAD
SPRINGFIELD VA 22153

MAILED

APR 19 2011

OFFICE OF PETITIONS

In re Application of :
Linares :
Application No.: 11/548,085 : ON PETITION
Filed: October 10, 2006 :
Attorney Docket No: 11/548,085_Best_Medical :

This is in response to the petition under 37 CFR 1.137(b) filed March 23, 2011.

The petition is DISMISSED.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition" under 37 CFR 1.137(b)."

This application became abandoned for failure to respond in a timely manner to the Notice to File Missing Parts of Non-Provisional Application mailed March 1, 2007. The notice set a shortened period for reply of two-months from its mailing date. Extensions of time were available pursuant to 37 CFR 1.136(a). A response was not received within the allowable period and the application became abandoned on May 2, 2007. A Notice of Abandonment was mailed on November 8, 2007.

Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a non-provisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee, or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

The instant petition does not satisfy the requirements of items (1) and (3) above.

As to Item (1), the Notice to File Missing Parts of Non-Provisional Application required an executed declaration under 37 CFR 1.63 be filed along with payment of a surcharge of $65.00 for the late filing of the same. The executed declaration was received on March 23, 2011, however, the $65.00 surcharge was not paid. The renewed petition must be accompanied by the $65.00 surcharge or an authorization to charge a deposit account for the same.

As to (3), the *Manual of Paten Examining Procedure*, Section 7711.03(c) provides, in pertinent part, that:

> Where a petition pursuant to 37 CFR 1.137(b) is not filed within 1 year of the date of abandonment of the application (note that abandonment takes place by operation of law, rather than by the mailing of a Notice of Abandonment), the Office may require:
>
> (A) further information as to when the applicant (or the applicant's representative) first became aware of the abandonment of the application; and
>
> (B) a showing as to how the delay in discovering the abandoned status of the application occurred despite the exercise of due care or diligence on the part of the applicant (or applicant's representative).
>
> To avoid delay in the consideration of the merits of a petition under 37 CFR 1.137(b) in instances in which such petition was not filed within 1 year of the date of abandonment of the application, applicants should include:
>
> (A) the date that the applicant first became aware of the abandonment of the application; and
>
> (B) a showing as to how the delay in discovering the abandoned status of the application occurred despite the exercise of due care or diligence on the part of the applicant.
>
> In either instance, applicant's failure to carry the burden of proof to establish that the "entire" delay was "unavoidable" or "unintentional" may lead to the denial of a petition under 37 CFR 1.137(a) or 37 CFR 1.137(b), regardless of the circumstances that originally resulted in the abandonment of the application.

Petitioner did not provide not explanation for the more than three year delay in filing the instant petition. Accordingly, the renewed petition must be accompanied by an explanation for said delay including, but not limited to, the considerations provided in MPEP § 711.03(c) cited above.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop Petitions
Commissioner for Patents
United States Patent and Trademark Office
Box 1450

Alexandria, VA 22313-1450

By facsimile: (571) 273-8300
Attn: Office of Petitions

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

BEST MEDICAL INTERNATIONAL, INC.
ATTN: RAY
7643 FULLERTON ROAD
SPRINGFIELD VA 22153

MAILED
MAY 27 2011
OFFICE OF PETITIONS

In re Application of :
Linares :
Application No.: 11/548,085 : ON PETITION
Filed: October 10, 2006 :
Attorney Docket No: 11/548,085_Best_Medical :

This is in response to the renewed petition under 37 CFR 1.137(b) filed May 2, 2011, and in supplement on May 5, 2011.

The petition under 37 CFR 1.137(b) is **granted**.

This application became abandoned for failure to respond in a timely manner to the Notice to File Missing Parts of Non-Provisional Application mailed March 1, 2007. The notice set a shortened period for reply of two-months from its mailing date. Extensions of time were available pursuant to 37 CFR 1.136(a). A response was not received within the allowable period and the application became abandoned on May 2, 2007. A Notice of Abandonment was mailed on November 8, 2007.

Deposit account 50-5192 will be charged $65.00 for the surcharge required by the Notice to File Missing Parts of Non-Provisional Application mailed March 1, 2007.

This application is being directed to the Office of Patent Application Processing for further processing.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

9-30-2010

Patent No. : 7,792,643 B2
Ser. No. : 11/548,163
Inventor(s) : Glen A. Herman, et. al.
Issued : September 7, 2010

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of Rule(s) 1.322.

Assignees' names and addresses (assignment data) printed in a patent, are based *solely* on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing ***incorrect or erroneous*** assignment data, *before* issuance of a Certificate of Correction, under 37 CFR 1.323 *(see Manual of Patent Examining Procedures (M.P.E.P) Chp.1400, sect. 1481).* This procedure is required *at any time after the issue fee is paid*, including after issuance of the patent.

In view of the foregoing, your request is hereby denied.

A request to correct the Assignee under 37 CFR 3.81(b) should include:

A. **the processing fee set forth in 37 CFR 1.17(i) (currently $130);**
B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
C. a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

By mail: Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Customer Service Window
Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: (703) 872-9306
ATTN: Office of Petitions

If a fee (currently $100) was previously submitted for consideration of a Request for Certificate of Correction, under CFR 1.323, to correct assignment data, , no additional fee is required.

Eva James
For Mary Diggs
Decisions & Certificates
of Correction Branch
(703) 756-1583 or 1580

Shook, Hardy & Bacon LLP
2555 Grand blvd.
Kansas City, MO 64108

ej

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

SHOOK, HARDY & BACON LLP
INTELLECTUAL PROPERTY DEPARTMENT
2555 GRAND BLVD.
KANSAS CITY MO 64108-2613

MAILED

FEB 14 2011

OFFICE OF PETITIONS

In re Patent No. 7,792,643 :
Issue Date: September 7, 2010 :
Application No. 11/548,163 : ON PETITION
Filed: October 10, 2006 :
Attorney Docket No. HNTB.127435 :

This is a decision on the petition filed November 30, 2010, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **GRANTED**.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3208. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

Petitioner may request a refund of the $100.00 fee paid on November 30, 2010, since the fee was previously paid on September 22, 2010, by writing to the Office of Finance, Refund Section. A copy of this decision should accompany the request.

The Certificates of Correction Branch will be notified of this decision granting the petition under 37 CFR 3.81(b) and directing issuance of the requested Certificate of Correction.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

[1] *See* MPEP 1309, subsection II; and Official Gazette of June 22, 2004.

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
Alexandria, VA 22313-1450
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MAILED

JUN 21 2011

PCT LEGAL ADMINISTRATION

BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH VA 22040-0747

In re Application of	:	
ECKERT et al.	:	DECISION ON PETITION
Application No.: 11/548,269	:	UNDER 37 CFR 1.78(a)(3)
Filed: October 10, 2006	:	AND 37 CFR 1.55(c)
Attorney Docket No.: 0147-0229PUS3	:	

This is a decision on the "PETITION UNDER 37 CFR 1.78(a)(3) AND 1.55(c) TO ACCEPT AN UNINTENTIONALLY DELAYED CLAIM TO PRIORITY AND REQUEST FOR CERTIFICATE OF CORRECTION," filed June 3, 2010.

Petition Under 37 CFR 1.78(a)(3)

The petition is **DISMISSED** as **MOOT**.

The Certificate of Correction is not adding a claim to priority under 37 CFR 1.78(a)(3). Rather, the Certificate of Correction merely indicates the fact that parent application 09/889,300 is the national stage application under 35 U.S.C. 371 of PCT/EP00/00174 filed January 12, 2000.

In view of the above, the $1,410 petition fee submitted is unnecessary and will be refunded to petitioner's deposit account in due course.

Petition Under 37 CFR 1.55(c)

The petition is **DISMISSED** as **MOOT**.

The petition under 37 CFR 1.55(c) is unnecessary since the claim for priority was timely made in the declaration of inventors as required by 37 CFR 1.63(c)(2) and within the time period provided by 37 CFR 1.55(a)(1). Moreover, the information concerning the benefit claim was recognized by the Office as shown by its inclusion on the first filing receipt. Again, the petition under 37 CFR 1.55(c) and the surcharge under 37 CFR 1.17(t) are not required.

Any further correspondence with respect to this matter may be filed electronically via EFS-Web selecting the document description "Petition for review and processing by the PCT Legal Office" or by mail addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box

1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

/Daniel Stemmer/

Daniel Stemmer
PCT Legal Examiner
Office of PCT Legal Administration
Telephone: (571) 272-3301

/Bryan Lin/

Bryan Lin
PCT Legal Examiner
Office of PCT Legal Administration

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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MAILED

APR 06 2011

OFFICE OF PETITIONS

SUTHERLAND ASBILL & BRENNAN LLP
999 PEACHTREE STREET, N.E.
ATLANTA GA 30309

In re Application of
Lynn H. Wheeler et al.
Application No. 11/548,460
Filed: October 11, 2006
Attorney Docket No. **34250-1160**

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 03, 2010, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before September 24, 2010, as required by the Notice of Allowance and Fee(s) Due, mailed June 24, 2010. Accordingly, the date of abandonment of this application is September 25, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1510 and the publication fee of $300, (2) the petition fee of $1620; and (3) a proper statement of unintentional delay. Accordingly, the Issue Fee is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to Tredelle Jackson at (571) 272-2783.

This application is being referred to the Office of Data Management for processing into a patent.

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : March 10, 2011

TO SPE OF : ART UNIT 1626

SUBJECT : Request for Certificate of Correction for Appl. No.: 11548501 Patent No.: 7713963

CofC mailroom date: Feb. 25, 2011

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Certificates of Correction Branch
703-756-1814

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☒ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: _____

Joseph K. McKane
JOSEPH K. McKANE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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LAW OFFICE OF JERRY D. HAYNES , P.A
P.O. BOX 350392
FORT LAUDERDALE FL 33335

MAILED

OCT 07 2010

OFFICE OF PETITIONS

In re Application of :
Mark Hedstrom :
Application No. 11/548,515 : DECISION ON PETITION
Filed: October 11, 2006 :
Attorney Docket No. 1413.004 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 2, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, April 29, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on July 30, 2009. A Notice of Abandonment was mailed November 25, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an Amendment, (2) the petition fee of $810.00, and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

This application is being referred to Technology Center AU 2617 for appropriate action by the Examiner in the normal course of business on the reply received.

Joan Olszewski
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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GOODWIN PROCTER LLP
ATTN: PATENT ADMINISTRATOR
135 COMMONWEALTH DRIVE
MENLO PARK CA 94025-1105

MAILED

JAN 27 2011

OFFICE OF PETITIONS

In re Application of :
Freeman et al. :
Application No. 11/548,533 : ON PETITION
Filed: October 11, 2006 :
Attorney Docket No. 38187-2859.US :

This is a decision on the petition under 37 CFR 1.182, filed January 10, 2011, to change the order of the names of the inventors.

The petition is **GRANTED**.

The order of the names of the inventors will be changed as follows:

1. Dominique M. Freeman

2. Don Alden

3. Dirk Boecker

A Corrected Filing Receipt reflecting the above changes is enclosed.

This matter is now being referred to Technology Center AU 3731 to await examination.

Telephone inquiries regarding this decision should be directed to Joan Olszewski at (571) 272-7751. All other inquiries should be directed to the Technology Center.

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

Enclosure: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
11/548,533	10/11/2006	3731	1900	38187-2859.US	51	10

CONFIRMATION NO. 5519

CORRECTED FILING RECEIPT

77845
Goodwin Procter LLP
Attn: Patent Administrator
135 Commonwealth Drive
Menlo Park, CA 94025-1105

OC000000045632296

Date Mailed: 01/25/2011

Receipt is acknowledged of this non-provisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections**

Applicant(s)

DOMINIQUE M. FREEMAN, LA HONDA, CA;
DON ALDEN, SUNNYVALE, CA;
DIRK BOECKER, PALO ALTO, CA;

Power of Attorney: The patent practitioners associated with Customer Number 77845

Domestic Priority data as claimed by applicant

This application is a DIV of 10/335,258 12/31/2002 PAT 7,674,232
which is a CIP of 10/127,395 04/19/2002 PAT 7,025,774

Foreign Applications (You may be eligible to benefit from the **Patent Prosecution Highway** program at the USPTO. Please see http://www.uspto.gov for more information.)

If Required, Foreign Filing License Granted: 01/04/2007

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/548,533**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No
**** SMALL ENTITY ****

Title

Method and apparatus for penetrating tissue

Preliminary Class

606

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at http://www.uspto.gov/web/offices/pac/doc/general/index.html.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, http://www.stopfakes.gov. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as

set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

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United States Patent and Trademark Office
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SEP 24 2010

OFFICE OF PETITIONS

MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

In re Application of :
GRINFELD, RON :
Application No. 11/548,562 : ON APPLICATION FOR
Filed: 10/11/2006 : PATENT TERM ADJUSTMENT
Attorney Docket No. 17057US03 :

This is in response to the petition under 37 CFR 1.705(b) filed August 10, 2010. Applicants submit that the correct patent term adjustment to be indicated on the patent is 1132 days, not 640 days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants seek this correction solely on the basis that the Office will take in excess of three years to issue this patent.

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within three years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentees are entitled to for Office failure to issue the patent within three years. See 37 CFR 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under 37 CFR 1.702(a)(4) or applicant delay under 37 CFR

1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office cannot make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss such a request as premature.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicants are advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicants must timely file an application for patent term adjustment prior to the payment of the issue fee.[1]

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

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[1] For example, if applicants dispute both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed, and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicants must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the § 1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within two months after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3211.

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
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Decision Date : January 5, 2012

In re Application of :

James Brennan

Application No : 11548572

Filed : 11-Oct-2006

Attorney Docket No : MIC-121

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY/AGENTOF RECORD

This is an electronic decision on the Request to Withdraw as attorney or agent of record under 37 CFR§ 1.36(b), filed January 5, 2012

The request is **APPROVED**

The request was signed by Scott S. Kokka (registration no. 51893) on behalf of all attorneys/agents associated with Customer Number 84738 . All attorneys/agents associated with Customer Number 84738 have been withdrawn.

Since there are no remaining attorneys of record, all future communications from the Office will be directed to the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71, with Customer number 47604 .

As a reminder, requester is required to inform the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71 of the electronically processed petition.

Telephone inquiries concerning this decision should be directed to the Patent Electronic Business Center (EBC) at 866-217-9197.

Office of Petitions

Doc Code: PET.AUTO **Document Description: Petition automatically granted by EFS-Web**	PTO/SB/83 U.S. Patent and Trademark Office Department of Commerce

Electronic Petition Request	**REQUEST FOR WITHDRAWAL AS ATTORNEY OR AGENT AND CHANGE OF CORRESPONDENCE ADDRESS**
Application Number	11548572
Filing Date	11-Oct-2006
First Named Inventor	James Brennan
Art Unit	2193
Examiner Name	JOHN CHAVIS
Attorney Docket Number	MIC-121
Title	Visual Interface for Automated Software Testing

◉ Please withdraw me as attorney or agent for the above identified patent application and the practitioners of record associated with Customer Number: 84738

The reason(s) for this request are those described in 37 CFR:

10.40(b)(4)

10.40(c)(1)(iv)

10.40(c)(5)

Certifications

☒ I/We have given reasonable notice to the client, prior to the expiration of the response period, that the practitioner(s) intend to withdraw from employment

☒ I/We have delivered to the client or a duly authorized representative of the client all papers and property (including funds) to which the client is entitled

☒ I/We have notified the client of any responses that may be due and the time frame within which the client must respond

Change the correspondence address and direct all future correspondence to:
The address of the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71, associated with Customer Number: 47604

I am authorized to sign on behalf of myself and all withdrawing practitioners.

Signature	/Scott S. Kokka/
Name	Scott S. Kokka
Registration Number	51893

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Paper No.

MAILED

JAN 19 2011

OFFICE OF PETITIONS

Robert H. Frantz
P.O. Box 23324
Oklahoma City OK 73123

In re Application of :
Yellepeddy :
Application No. 11/548,573 : DECISION ON PETITION
Filing Date: October 11, 2006 : PURSUANT TO
Attorney Docket No.: : 37 C.F.R. § 1.78(A)(3)
AUS920020484US2 :
Title: SECURITY SYSTEM FOR :
REPLICATED STORAGE DEVICES ON :
COMPUTER NETWORKS :

This is a decision on the petition pursuant to 37 C.F.R. § 1.78(a)(3), filed on September 30, 2010, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to prior-filed non-provisional application 10/262,499, set forth in an amendment to the specification that was filed concurrently with this petition. This is also a decision on the petition pursuant to 37 C.F.R. § 1.181, filed on July 26, 2010.

It is noted that the amendment to the specification that was submitted concurrently with this petition cannot be entered, as it was submitted as part of the petition. See 37 C.F.R. § 1.4(c). However, a review of the electronic file shows that this same amendment was submitted to the Office on January 28, 2010. As such, the amendment which was filed concurrently with this petition will not be entered, and the amendment of January 28, 2010, will serve to introduce the benefit claim into the specification.

This petition pursuant to 37 C.F.R. § 1.78(a)(3) is **GRANTED**.

A petition for acceptance of a claim for late priority pursuant to 37 C.F.R. § 1.78(a)(3) is only applicable to those

applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 C.F.R. § 1.78(a)(2)(ii). In addition, the petition pursuant to 37 C.F.R. § 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 C.F.R. § 1.78(a)(2)(i) of the prior-filed applications, unless previously submitted;

(2) the surcharge set forth in 37 C.F.R. § 1.17(t), and;

(3) a statement that the entire delay between the date the claim was due under 37 C.F.R. § 1.78(a)(2)(ii) 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.

Petitioner has included the petition fee, an amendment to the specification, and the proper statement of unintentional delay.

All of the above requirements having been satisfied, the late claim for priority pursuant to 35 U.S.C. § 120 is accepted as being unintentionally delayed.

The granting of this petition to accept the delayed benefit claim to the prior-filed application pursuant to 37 C.F.R. § 1.78(a)(3) should not be construed as meaning that this application is entitled to the benefit of the prior-filed application. In order for this application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. § 120 and 37 C.F.R. §§ 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that Applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the Examiner will, in due course, consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed nonprovisional application, accompanies this decision on petition.

This application is being forwarded to Technology Center Art Unit 2435 for consideration by the examiner of Applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed application.

The petition pursuant to 37 C.F.R. § 1.181 is **DISMISSED**. The need for the petition pursuant to 37 C.F.R. § 1.78(a)(3) arose due to Applicant's filing error, and not due to "division of review responsibilities at the USPTO, and from an overly stringent application of the rules regarding claim for priority and late claim for priority," as asserted by Applicant on the fourth page of this petition. The petition fee that is associated with the filing of the Rule 1.78(a)(3) petition cannot be refunded, as the petition was necessitated by Applicant's filing error, the payment was not made in error (it was intentionally paid in compliance with 37 C.F.R. §§ 1.17(t) and 1.78(a)(3)), and it was not in excess of that which is required by 37 C.F.R. § 1.17(t).

Telephone inquiries regarding this decision should be directed to Senior Attorney Paul Shanoski at (571) 272-3225.[1]

Chris Bottorff
Supervisor
Office of Petitions

Encl. Corrected Filing Receipt

1 Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner.

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
11/548,573	10/11/2006	2435	1000	AUS920020484US2	20	3

CONFIRMATION NO. 5589

Robert H. Frantz
P.O. Box 23324
Oklahoma City, OK 73123

CORRECTED FILING RECEIPT

OC000000045526610

Date Mailed: 01/18/2011

Receipt is acknowledged of this non-provisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections**

Applicant(s)

Krishna Kishore Yellepeddy, Austin, TX;

Power of Attorney: None

Domestic Priority data as claimed by applicant

This application is a CON of 10/262,499 09/30/2002 PAT 7,146,499

Foreign Applications (You may be eligible to benefit from the **Patent Prosecution Highway** program at the USPTO. Please see http://www.uspto.gov for more information.)

If Required, Foreign Filing License Granted: 01/18/2011

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/548,573**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Security System for Replicated Storage Devices on Computer Networks

Preliminary Class

713

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at http://www.uspto.gov/web/offices/pac/doc/general/index.html.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, http://www.stopfakes.gov. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as

set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

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DOLBY LABORATORIES, INC.
999 BRANNAN STREET
SAN FRANCISCO CA 94103

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AUG 18 2011

OFFICE OF PETITIONS

Patent No. 7,698,570 :
Issue Date: April 13, 2010 :
Application No. 11/548,592 : ON PETITION
Filed: October 11, 2006 :
Attorney Docket No. 1999-23US2 :

This is a decision on the petition filed July 27, 2011, a request under 37 CFR 3.81(b) to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The petition is **GRANTED**.

The patent file is being forwarded to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

Telephone inquiries concerning this decision may be directed to the Kimberly Inabinet at (571) 272-4618. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (703) 756-1814.

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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DICKSTEIN SHAPIRO LLP
1633 Broadway
NEW YORK, NY 10019

MAILED

SEP 12 2011

OFFICE OF PETITIONS

In re Patent No. 7,949,698 :
Issue Date: May 24, 2011 :
Application No. 11/548,935 : DECISION ON PETITION
Filed: October 12, 2006 : UNDER 37 CFR 1.55(c)
Attorney Docket No. 10046.0116 :

This is a decision on the petition under 37 CFR 1.55(c) filed May 23, 2011, to accept an unintentionally delayed claim under 35 U.S.C. § 119(a)-(d) for the benefit of priority to foreign German Application No. 10 2006 028 944.7 filed June 23, 2006.

The petition is **GRANTED**.

This pending nonprovisional application was filed after November 29, 2000, and did not include a reference to the foreign application, for which benefit is now sought, within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior foreign application. Since the claim for priority is submitted after the period specified in 37 CFR 1.55(a)(1)(i), this is an appropriate petition under the provisions of 37 CFR 1.55(c).

A petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim for priority requires:

(1) The nonprovisional application claiming the benefit of an earlier filing date must be filed on or after November 29, 2000;

(2) the claim submitted with the petition must identify the prior foreign application for which priority is claimed, as well as any foreign application for the same subject matter and having a filing date before that of the application for which priority is claimed, by the application number, country, and the filing date and be included either in an oath or declaration (37 CFR 1.63(c)(2)) or in an Application Data Sheet (37 CFR 1.76(b)(6);

(3) the surcharge as set forth in 37 CFR 1.17(t);

(4) a statement that the entire delay between the date the claim was due under 37 CFR 1.55(a)(1) 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); and

(5) the above-identified nonprovisional application must be filed within 12 months of the filing date of the foreign application.

On April 20, 2011, an Application Data Sheet (ADS) was received which identifies the foreign application for which priority is claimed by application number, country and filing date. The required petition fee of $1,410 was received with the petition. Lastly, petitioner has provided an adequate statement of unintentional delay.

All of the above requirements having been satisfied, the late claim for priority under 35 U.S.C. § 119(a)-(d) is accepted as being unintentionally delayed.

An unofficial translation of the corrected cover page filed 5/23/11 with the petition reveals that it is a certificate of correction or amendment, that the priority certificate which was incorrectly issued on 10/20/2006 is amended by this certificate having the corrected information, and that the pieces attached to the priority certificate of 10/20/2006 are a correct and precise reproduction of the original underlying documents of this patent application.

In view of the granting of this petition, petitioner may request a Certificate of Correction pursuant to the provisions of 37 CFR 1.323 and pay the required fee of $100. Petitioner should complete form PTO-1050, and return it with the request.

A corrected Filing Receipt, which includes the priority claim to the prior-filed foreign application, accompanies this decision on petition.

Petitioner is advised that the granting of this petition and the mailing of a corrected Filing Receipt should not be viewed as an indication that a determination has been made that this application is entitled to claim benefit of the prior-filed application. A determination that applicant is entitled to claim benefit of the prior-filed application will be made by the Examiner prior to the mailing of any Certificate of Correction.

Any inquiries directly pertaining to this matter may be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
11/548,935	10/12/2006	2193	2830	10046.0116	36	6

CONFIRMATION NO. 6156

CORRECTED FILING RECEIPT

38881
DICKSTEIN SHAPIRO LLP
1633 Broadway
NEW YORK, NY 10019

OC000000049745682

Date Mailed: 09/09/2011

Receipt is acknowledged of this non-provisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections**

Applicant(s)

Marcus Janke, Munich, GERMANY;
Peter Laackmann, Munich, GERMANY;

Assignment For Published Patent Application

Infineon Technologies AG, Munich, GERMANY

Power of Attorney:
Laura Brutman--38395

Domestic Priority data as claimed by applicant

Foreign Applications (You may be eligible to benefit from the **Patent Prosecution Highway** program at the USPTO. Please see http://www.uspto.gov for more information.)
GERMANY 10 2006 028 944.7 06/23/2006

If Required, Foreign Filing License Granted: 12/18/2006

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/548,935**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

CIRCUIT ARRANGEMENT AND METHOD FOR INITIALIZING A RANDOM NUMBER GENERATOR

Preliminary Class

708

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at http://www.uspto.gov/web/offices/pac/doc/general/index.html.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, http://www.stopfakes.gov. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as

set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Date Mailed : 03/29/11

Patent No. : 7878329 B1
Patent Issued : 02/01/11
Docket No. : **14444-003001**

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of Rule(s) 1.322.

The word conversions, purported to be in column(s) 13 and 15, line(s) 47 and 2, cannot be found in the printed patent. **"Therefore, no correction(s) is in order here under United States Codes (U.S.C.) 254 and the Code of Federal Regulation (C.F.R.) 1322."**

In view of the foregoing, your request in this matter is hereby denied.

Lamonte M. Newsome
For Mary Diggs, Supervisor
Decisions & Certificates
Of Correction Branch
(703) 756-1814 or (703) 756-1574

FISH & RICHARDSON P.C. (TC)
PO BOX 1022
MINNEAPOLIS MN 55440-1022

LMN

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United States Patent and Trademark Office
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FOLEY HOAG, LLP
PATENT GROUP, WORLD TRADE CENTER WEST
155 SEAPORT BLVD
BOSTON MA 02110

MAILED
DEC 13 2011
OFFICE OF PETITIONS

In re Application of :
Norman et al. :
Application No. 11/548,962 : DECISION ON PETITION
Filed: October 12, 2006 :
Attorney Docket No. HTY-004.01 :
:

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 28, 2011, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of May 29, 2009. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). No extension of time pursuant to the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the date of abandonment of this application is August 30, 2009. A Notice of Abandonment was mailed December 2, 2009.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that

the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. *See* MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item (3).

As to item (3), there are three periods to be considered during the evaluation of a petition under 37 CFR 1.137(b):

(1) the delay in reply that originally resulted in the abandonment;

(2) the delay in filing an initial petition pursuant to 37 CFR 1.137(b) to revive the application; and

(3) the delay in filing a grantable petition pursuant to 37 CFR 1.137(b) to revive the application.

Currently, the delay has not been shown to the satisfaction of the Director to be unintentional for periods (1) and (2).

As to Period (1):

The patent statute at 35 U.S.C. § 41(a)(7) authorizes the Director to revive an "unintentionally abandoned application." The legislative history of Public Law 97-247 reveals that the purpose of 35 U.S.C. § 41(a)(7) is to permit the Office to have more discretion than in 35 U.S.C. §§ 133 or 151 to revive abandoned applications in appropriate circumstances, but places a limit on this discretion, stating that "[u]nder this section a petition accompanied by either a fee of $500 or a fee of $50 would not be granted where the abandonment or the failure to pay the fee for issuing the patent was intentional as opposed to being unintentional or unavoidable." [emphasis added]. See H.R. Rep. No. 542, 97th Cong., 2d Sess. 6-7 (1982), reprinted in 1982 U.S.C.C.A.N. 770-71. The revival of an intentionally abandoned application is antithetical to the meaning and intent of the statute and regulation.

35 U.S.C. § 41(a)(7) authorizes the Director to accept a petition "for the revival of an unintentionally abandoned application for a patent." As amended December 1, 1997, 37 CFR 1.137(b)(3) provides that a petition under 37 CFR 1.137(b) must be accompanied by a statement that the delay was unintentional, but provides that "[t]he Commissioner may require additional information where there is a question whether the delay was

unintentional." Where, as here, there is a question whether the initial delay was unintentional, the petitioner must meet the burden of establishing that the delay was unintentional within the meaning of 35 U.S.C. § 41(a)(7) and 37 CFR 1.137(b). See In re Application of G, 11 USPQ2d 1378, 1380 (Comm'r Pats. 1989); 37 CFR 1.137(b). Here, in view of the inordinate delay (over two years) in resuming prosecution, there is a question whether the entire delay was unintentional. Petitioner should note that the issue is not whether some of the delay was unintentional by any party; rather, the issue is whether the entire delay has been shown to the satisfaction of the Director to be unintentional.

The question under 37 CFR 1.137(b) for period (1) is whether the delay on the part of the party having the right or authority to reply to avoid abandonment (or not reply) was unintentional. Accordingly, any renewed petition must clearly identify the party having the right to reply to avoid abandonment on August 30, 2009. That party, in turn must explain what effort(s) was made to further reply to the outstanding Office action and, further, why no reply was filed. If no effort was made to further reply, then that party must explain why the delay in this application does not result from a deliberate course of action (or inaction). Likewise, as the attorneys at Foley Hoag, LLP were counsel at the time of abandonment, an explanation why this application became abandoned while it was under their control and what efforts attorneys made to reply. Copies of any correspondence relating to the filing, or to not filing a further reply to the outstanding Office action are required from responsible person(s) and whoever else was involved with this application at the time of abandonment. Statements are required from any and all persons having firsthand knowledge of the circumstances surrounding the lack of a reply to the outstanding Office action.

As the courts have made clear, it is pointless for the USPTO to revive a long abandoned application without an adequate showing that the delay did not result from a deliberate course of action. See Lawman Armor v. Simon, 2005 U.S. Dist. LEXIS 10843, 74 USPQ2d 1633 (DC EMich 2005); Field Hybrids, LLC v. Toyota Motor Corp., 2005 U.S. Dist. LEXIS 1159 (D. Minn Jan. 27, 2005); Lumenyte Int'l Corp. v. Cable Lite Corp., Nos. 96-1011, 96-1077, 1996 U.S. App. LEXIS 16400, 1996 WL 383927 (Fed. Cir. July 9, 1996) (unpublished) (patents held unenforceable due to a finding of inequitable conduct in submitting an inappropriate statement that the abandonment was unintentional).

As to Period (2):

Likewise, where the applicant deliberately chooses not to seek or persist in seeking the revival of an abandoned application, or where the applicant deliberately chooses to delay seeking the

revival of an abandoned application, the resulting delay in seeking revival of the abandoned application cannot be considered as "unintentional" within the meaning of 37 CFR 1.137(b). *See* MPEP 711.03(c).

The language of both 35 U.S.C. § 41(a)(7) and 37 CFR 1.137(b) are clear and unambiguous, and, furthermore, without qualification. That is, the delay in filing the reply during prosecution, as well as in filing the petition seeking revival, must have been, without qualification, "unintentional" for the reply to now be accepted on petition. The Office requires that the entire delay be at least unintentional as a prerequisite to revival of an abandoned application to prevent abuse and injury to the public. *See* H.R. Rep. No. 542, 97th Cong., 2d Sess. 7 (1982), reprinted in 1982 U.S.C.C.A.N. 771 ("[i]n order to prevent abuse and injury to the public the Commissioner . . . could require applicants to act promptly after becoming aware of the abandonment"). The December 1997 change to 37 CFR 1.137 did not create any new right to overcome an intentional delay in seeking revival, or in renewing an attempt at seeking revival, of an abandoned application. *See* Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53160 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 87 (October 21, 1997), which clearly stated that any protracted delay (here, over 2 years) could trigger, as here, a request for additional information. As the courts have since made clear, a protracted delay in seeking revival, as here, requires a petitioner's detailed explanation seeking to excuse the delay as opposed to USPTO acceptance of a general allegation of unintentional delay. *See* Lawman Armor v. Simon, 2005 U.S. Dist. LEXIS 10843, 74 USPQ2d 1633, at 1637-8 (DC EMich 2005); Field Hybrids, LLC v. Toyota Motor Corp., 2005 U.S. Dist. LEXIS 1159 (D. Minn Jan. 27, 2005) at *21-*23. Statements are required from any and all persons having firsthand knowledge of the circumstances surrounding the protracted delay, after the abandonment date, in seeking revival.

As noted in MPEP 711.03(c)(II), subsection D, in instances in which such petition was not filed within 1 year of the date of abandonment of the application, applicants should include:

> (A) the date that the applicant first became aware of the abandonment of the application; and
> (B) a showing as to how the delay in discovering the abandoned status of the application occurred despite the exercise of due care or diligence on the part of the applicant.

In either instance, applicant's failure to carry the burden of proof to establish that the "entire" delay was "unavoidable" or "unintentional" may lead to the denial of a petition under 37 CFR

1.137(b), regardless of the circumstances that originally resulted in the abandonment of the application. *See also* New York University v. Autodesk, 2007 U.S. DIST LEXIS, U.S.District LEXIS 50832, *10 -*12 (S.D.N.Y. 2007)(protracted delay in seeking revival undercuts assertion of unintentional delay).
Any renewed petition may be addressed as follows:

By Mail: Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

The centralized facsimile number is **(571) 273-8300.**

Correspondence regarding this decision may also be filed through the electronic filing system of the USPTO.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3215.

Charlema Grant
Attorney Advisor
Office of Petitions

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FEB 21 2012

PCT LEGAL ADMINISTRATION

ARENT FOX LLP
1675 BROADWAY
NEW YORK NY 10019

In re Application of :
HANASH, Samir, et al. :
Application No. 11/549,050 : DECISION DISMISSING PETITIONS
Filed: 12 October 2006 : UNDER 37 CFR 1.78(a)(3) AND (a)(6)
Attorney Docket No. 108140.00064 :

This is a decision on the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed 06 September 2011, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 119(e) for the benefit of priority to the prior-filed nonprovisional and provisional applications set forth in the amendment filed concurrently with the petition.

The petition is **DISMISSED**

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000 and after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

(1) reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
(2) surcharge set forth in § 1.17(t); and
(3) statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional where there is a question whether the delay was unintentional.

The petition does not comply with item (1).

Before the petition under 37 CFR § 1.78(a)(3) can be granted, proper references must be added to intermediate applications 10/393,992 and 09/508,097. Specifically, application 10/393,992 lacks proper references to applications 09/508,097 and 60/018,659. Application 09/508,097 lacks a

proper reference to application 60/018,659. A petition under 37 CFR 1.78(a)(3) and (a)(6) would be required to add or correct a priority claim in application 10/393,992. As application 09/508,097 was filed prior to 2000, a petition under 37 CFR 1.182 would be required to add the references to it. MPEP 201.11, Section III. C. states in relevant part,

> Sometimes a pending application is one of a series of applications wherein the pending application is not copending with the first filed application but is copending with an intermediate application entitled to the benefit of the filing date of the first application. If applicant wishes that the pending application have the benefit of the filing date of the first filed application, applicant must, besides making reference to the intermediate application, also make reference to the first application. See Sticker Indus. Supply Corp. v. Blaw-Knox Co., 405 F.2d 90, 160 USPQ 177 (7th Cir. 1968) and Hovlid v. Asari, 305 F. 2d 747, 134 USPQ 162 (9th Cir. 1962). The reference to the prior applications must identify all of the prior applications and indicate the relationship (i.e., continuation, divisional, or continuation-in-part) between each nonprovisional application in order to establish copendency throughout the entire chain of prior applications. Appropriate references must be made in each intermediate application in the chain of prior applications. If an applicant desires, for example, the following benefit claim: "this application is a continuation of Application No. C, filed ---, which is a continuation of Application No. B, filed ---, which claims the benefit of provisional Application No. A, filed ---," then Application No. C must have a reference to Application No. B and provisional Application No. A, and Application No. B must have a reference to provisional Application No. A. (Emphasis added.)

Additionally, the amendment is not acceptable as drafted since it improperly incorporates by reference the prior-filed applications. An incorporation by reference statement added after an application's filing date is not effective because no new matter can be added to an application after its filing date (*see* 35 U.S.C. § 132(a)). If an incorporation by reference statement is included in an amendment to the specification to add a benefit claim under 35 U.S.C. § 120 after the filing date of the application, the amendment would not be proper. When a benefit claim under 35 U.S.C. § 120 is submitted after the filing of an application, the reference to the prior application cannot include an incorporation by reference statement of the prior application. *See* Dart Industries v. Banner, 636 F.2d 684, 207 USPQ 273 (C.A.D.C. 1980). *Note* MPEP §§ 201.06(c) and 608.04(b).

Before the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) can be granted, correction of the above matters is required.

Any further correspondence with respect to this matter may be filed electronically via EFS-Web selecting the document description "Petition for review and processing by the PCT Legal Office" or by mail addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Any inquiries concerning this decision may be directed to the Erin Thomson at (571) 272-3292.

/Bryan Lin/
Bryan Lin
PCT Legal Examiner
PCT Legal Administration

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OFFICE OF PETITIONS

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C.
ONE FINANCIAL CENTER
BOSTON, MA 02111

In re Application of	:	
BARKER, et al	:	
Application No. 11/549,068	:	DECISION ON PETITION
Filed: October 12, 2006	:	TO WITHDRAW
Attorney Docket No. 34874-629001US	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed March 4, 2011.

The request is **NOT APPROVED** because it is moot.

A review of the file record indicates that the power of attorney to William S. Galliani and the attorneys associated with Customer No. 23419, has been revoked by the assignee of the patent application on April 7, 2011. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

All future correspondence from the Office will continued to be forwarded to the above-identified address until other properly notified.

Telephone inquires concerning this decision should be directed to undersigned at (571) 272- 6735.

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

cc: WILLIAM S. GALLIANI
777 SIXTH STREET NW, SUITE 1100
WASHINGTON DC 20001

cc: BUSINESS OBJECTS AMERICAS;
BUSINESS OBJECTS S.A.
SAP AMERICA, INC.;
BUSINESS OBJECTS SOFTWARE LTD.
BUSINESS OBJECTS DATA INTEGRATION, INC.
3580 CARMEL MOUNTAIN RD., SUITE 300
SAN DIEGO, CA 92130

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SCHMEISER, OLSEN & WATTS
22 CENTURY HILL DRIVE
SUITE 302
LATHAM, NY 12110

MAILED
SEP 09 2010
OFFICE OF PETITIONS

In re Application of	:	
Julian Van Erlach	:	
Application No. 11/549,156	:	DECISION GRANTING PETITION
Filed: October 13, 2006	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. VANE-4634	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed September 8, 2010, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). *See* 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on August 25, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries concerning this decision should be directed to undersigned at (571) 272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

This application is being referred to Technology Center AU 2617 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed amendment and information disclosure statement

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.*

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OFFICE OF PETITIONS

Eckman Basu LLP
2225 East Bayshore Road
Suite 200
Palo Alto CA 94303-3220

In re Application of :
Yu et al. :
Application No. 11/549,215 : ON PETITION
Filed: 10/13/2006 :
Attorney Docket No. ASN-30101US :

This is a decision on the petition under 37 CFR 1.137(b), filed December 27, 2011, to revive the application.

The petition is **GRANTED**.

The application became abandoned for failure to file a timely and proper reply within the meaning of 37 CFR 1.113 to the final Office action of February 4, 2011, which set a three-month shortened statutory period for response. Applicant did not obtain any extensions of the time period for reply pursuant to 37 CFR 1.136(a). Accordingly, the application became abandoned on May 5, 2011. A Notice of Abandonment was mailed on October 19, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that applicant has supplied (1) the reply in the form of a RCE, the RCE fee, and the submission required by 37 CFR 1.114; (2) the petition fee; and (3) a proper statement of unintentional delay.

This application is being referred to Technology Center AU 1645 for processing of the RCE and for appropriate action by the Examiner on the amendment submitted in accordance with 37 CFR 1.114.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3211.

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 6-7-11

TO SPE OF : ART UNIT 2617

SUBJECT : Request for Certificate of Correction for Appl. No.: 11549229 Patent No.: 7853276

CofC mailroom date: 5-23-11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D40-E
Palm Location 7580

Note: _____

_____

Omega Lewis

Certificates of Correction Branch

703-756-1814 _____

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriate box.

- ☑ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: _____

_____

_____

_____

_____/KAMRAN AFSHAR/_____ 2617

SPE **Art Unit**

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 05/27/11

TO SPE OF : ART UNIT 2856

SUBJECT : Request for Certificate of Correction for Appl. No 11/549,259.: 7752930 B2

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)

Should the change(s) Be made?

RoChaun Johnson
Certificates of Correction Branch
571 272-0470

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriate box.

- ☒ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

HEZRON WILLIAMS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800

Hezron E. Williams 2856

SPE **Art Unit**

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 04/06/11

TO SPE OF : ART UNIT 1627

SUBJECT : Request for Certificate of Correction for Appl. No 11/549,262.: 7902251

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)

Should the change(s) Be made?

RoChaun Johnson
Certificates of Correction Branch
571 272-0470

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriate box.

xApproved	**All** changes apply.
☐ **Approved in Part**	Specify below which changes **do not** apply.
☐ **Denied**	State the reasons for denial below.

Comments: _____

_____

_____

_____

_____

/Sreeni Padmanabhan/

SPE / AU 1627

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BEDMINSTER, NJ 07921

MAILED

OCT 21 2010

OFFICE OF PETITIONS

In re Application of :
Volker Franz Strom :
Application No. 11/549,412 : ON PETITION
Filed: October 13, 2006 :
Attorney Docket No. 2002-0082-CON :

This is a decision on the petition under 37 CFR 1.137(b), filed September 8, 2010, to revive the above-identified application.

The application became abandoned for failure to file a reply to the Notice of Non-Compliant Amendment (37 CFR 1.121) mailed on November 25, 2009. A Notice of Abandonment was mailed on August 16, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment; (2) the petition fee of $1,620; and (3) a proper statement of unintentional delay. Therefore, the petition is **GRANTED**.

This application file is being referred to Technology Center Art Unit 2626 for review of the amendment filed with the present petition.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

LEVINE BAGADE HAN LLP
2400 GENG ROAD, SUITE 120
PALO ALTO, CA 94303

MAILED
JAN 21 2011
OFFICE OF PETITIONS

In re Application of :
Michael D. Laufer :
Application No. 11/549,454 : DECISION ON PETITION
Filed: October 13, 2006 :
Attorney Docket No. STKRNZ00100 :

This is a decision on the petition, filed November 16, 2010, which is being treated as a petition under 37 CFR 1.8(b), requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned as a result of petitioner's failure to file an appeal brief (and fee required by 37 CFR 41.20(b)(2)) within the two (2) months time period provided in 37 CFR 41.37(a)(1) of the April 16, 2010 Notice of Appeal. Five (5) months extension of time pursuant to the provisions of 37 CFR 1.136(a) was obtained. Accordingly, a reply was due on or before November, 16, 2010.

Office records show a timely reply was received under 37 CFR 1.8 on November 16, 2010, which includes the following: Request for Continued Examination (RCE); the amendment and five (5) month extension of time.

The petition satisfies the above requirements of 37 CFR 1.8(b). Accordingly, the holding of abandonment is hereby withdrawn and the application restored to pending status.

This application is being referred to Technology Center AU 3767 for appropriate action in the normal course of business on the reply received on November 16, 2010.

Irvin Dingle
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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FROMMER LAWRENCE & HAUG
745 Fifth Avenue-10th Floor
New York, NY 10151

MAILED

DEC 01 2010

OFFICE OF PETITIONS

In re Application of	:	
Ivan Litovski, et al.	:	
Application No. 11/549,567	:	DECISION ON PETITION
Filed: October 13, 2006	:	TO WITHDRAW
Attorney Docket No. 20410/1203502-US1	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed November 2, 2010.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a).

The request was signed by John Branch on behalf of all attorneys of record. All attorneys/agents have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

All future communications from the Office will be directed to the assignee of the entire interest at the first copied address below until otherwise properly notified by the applicant.

Telephone inquiries concerning this decision should be directed to Terri Johnson at 571-272-2991.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

cc: **Scansafe Limited**
The Connection
198 High Holborn
London, WC1V 8BD
United Kingdom

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/549,567	10/13/2006	Ivan Litovski	20410/1203502-US1

CONFIRMATION NO. 7163

20999
FROMMER LAWRENCE & HAUG
745 FIFTH AVENUE- 10TH FL.
NEW YORK, NY 10151

POWER OF ATTORNEY NOTICE

Date Mailed: 12/01/2010

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 11/02/2010.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

/tsjohnson/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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HARBOR BIOSCIENCES, INC.
9171 TOWNE CENTRE DRIVE
SUITE 180
SAN DIEGO CA 92122

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FEB 08 2011

OFFICE OF PETITIONS

In re Application of :
James M. Frincke :
Application No. 11/549,580 : DECISION ON PETITION
Filed: October 13, 2006 :
Attorney Docket No. 202.13C :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 13, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of the issue and publication fees; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Notice of Allowance mailed April 21, 2010, is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.

This application is being referred to the Office of Data Management to be processed into a patent.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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KOESTNER PATENT LAW
2192 MARTIN ST.
SUITE 150
IRVINE CA 92612

MAILED

MAR 01 2011

OFFICE OF PETITIONS

In re Application of :
Jacobson :
Application No. 11/549,581 : DECISION
Filed/Deposited: 13 October, 2006 :
Attorney Docket No. 1071.P001 US :

This is a decision on the papers filed on 11 January, 2011, considered as a petition pursuant to 37 C.F.R. §1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition pursuant to 37 C.F.R. §1.181 is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition pursuant to 37 C.F.R. §1.181."

This is **not** a final agency action within the meaning of 5 U.S.C. §704.

As to the Request to Withdraw
the Holding of Abandonment

Petitioner is directed to the Commentary at MPEP §711.03(c)(I) for guidance as to the proper showing requirements for relief pursuant to 37 C.F.R. §1.181.

Petitioner appears not to comply with the guidance in the Commentary at MPEP §711.03(c)(I)—as discussed below, Petitioner has failed to satisfy the showing requirements set forth there. Petitioner may find it beneficial to review that material and move step-wise through that guidance in the effort to satisfy the showing requirements (statements and supporting documentation).

BACKGROUND

The record reflects as follows:

Petitioner failed to reply timely and properly to the Notice of Missing Parts mailed on 4 January, 2007, with reply due absent an extension of time on or before 4 March, 2007.

The application went abandoned by operation of law after midnight 4 March, 2007.

The Office mailed the Notice of Abandonment on 18 September, 2007.

Petitioner appears to have ignored the Notice of Missing Parts and, possibly, the Notice of Abandonment.

On 11 January, 2011, Petitioner filed a request to withdraw the holding of abandonment pursuant to 37 C.F.R. §1.181, and averred non-receipt, and the papers that Petitioner submitted on 11 January, 2011, via Electronic Filing System (EFS) contained a certificate of transmittal via FAX dated 25 September, 2007, however, there is no showing (e.g., FAX Acknowledgement Receipt and/or statement of first person by the signor of the certificate (i.e., "Joy C. Ngo" (Mr. Ngo) with the 11 January, 2011, transmittal evidencing actual transmittal on 25 September, 2007. Moreover, while there is the averment of non-receipt, the petition did not provide the recitals required under the Rule (set forth and described below), and while a copy of a docket sheet was provided, there was no submission of the due date (4 March, 2007) calendar for the firm as required. And, again, while the petition carried a certificate of FAX transmittal, there is no evidence of record in support of that certificate—and, thus, the appearance certainly is that the petition was not filed timely.

With regard to Petitioner's request to withdraw the holding of abandonment pursuant to 37 C.F.R. §1.181, the guidance in the Commentary at MPEP §711.03(c)(I) provides in pertinent part as to non-receipt:

***

> The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.
>
> Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.

A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.[1]

***

With regard to Petitioner's request to withdraw the holding of abandonment pursuant to 37 C.F.R. §1.181, the guidance in the Commentary at MPEP §711.03(c)(I) provides in pertinent part as to timely fling:

***

37 C.F.R. §1.10(c) through §1.10(e) and §1.10(g) set forth procedures for petitioning the Director of the USPTO to accord a filing date to correspondence as of the date of deposit of the correspondence as "Express Mail." A petition to withdraw the holding of abandonment relying upon a timely reply placed in "Express Mail" must include an appropriate petition under 37 C.F.R. §1.10(c), (d), (e), or (g) (see MPEP §513). When a paper is shown to have been mailed to the Office using the "Express Mail" procedures, the paper must be entered in PALM with the "Express Mail" date.

Similarly, applicants may establish that a reply was filed with a postcard receipt that properly identifies the reply and provides *prima facie* evidence that the reply was timely filed. See MPEP §503. For example, if the application has been held abandoned for failure to file a reply to a first Office action, and applicant has a postcard receipt showing that an amendment was timely filed in response to the Office action, then the holding of abandonment should be withdrawn upon the filing of a petition to withdraw the holding of abandonment. When the reply is shown to have been timely filed based on a postcard receipt, the reply must be entered into PALM using the date of receipt of the reply as shown on the post card receipt.

Where a certificate of mailing under 37 C.F.R. §1.8, but not a postcard receipt, is relied upon in a petition to withdraw the holding of abandonment, see 37 C.F.R. 1.8(b) and MPEP §512. As stated in 37 C.F.R. §1.8(b)(3) the statement that attests to the previous timely mailing or transmission of the correspondence must be on a personal knowledge basis, or to the satisfaction of the Director of the USPTO. If the statement attesting to the previous timely mailing is not made by the person who signed the Certificate of Mailing (i.e., there is no personal knowledge basis), then the statement attesting to the previous

[1] *See*: MPEP §711.03(c) (I)(A).

timely mailing should include evidence that supports the conclusion that the correspondence was actually mailed (e.g., copies of a mailing log establishing that correspondence was mailed for that application). When the correspondence is shown to have been timely filed based on a certificate of mailing, the correspondence is entered into PALM with the actual date of receipt (i.e., the date that the duplicate copy of the papers was filed with the statement under 37 C.F.R. §1.8).

37 C.F.R. §1.8(b) also permits applicant to notify the Office of a previous mailing or transmission of correspondence and submit a statement under 37 C.F.R. §1.8(b)(3) accompanied by a duplicate copy of the correspondence when a reasonable amount of time (e.g., more than one month) has elapsed from the time of mailing or transmitting of the correspondence. Applicant does not have to wait until the application becomes abandoned before notifying the Office of the previous mailing or transmission of the correspondence. Applicant should check the private Patent Application Information Retrieval (PAIR) system for the status of the correspondence before notifying the Office. See MPEP §512. [2]

***

Petitioner's reply to the Notice of Abandonment is late under the rule (37 C.F.R. §1.181), and Petitioner is reminded of the guidance set forth in the Commentary at MPEP §711.03(c) (in pertinent part):

***

C. Treatment of Untimely Petition To Withdraw Holding of Abandonment

37 C.F.R. 1.181(f) provides that, *inter alia*, except as otherwise provided, any petition not filed within 2 months from the action complained of may be dismissed as untimely. Therefore, any petition (under 37 C.F.R. §1.181) to withdraw the holding of abandonment not filed within 2 months of the mail date of a notice of abandonment (the action complained of) may be dismissed as untimely. 37 C.F.R. §1.181(f).

Rather than dismiss an untimely petition to withdraw the holding of abandonment under 37 C.F.R. §1.181(f), the Office may require a terminal disclaimer as a condition of granting an untimely petition to withdraw the holding of abandonment.

***

3. Utility and Plant Applications Filed on or After May 29, 2000

In utility and plant applications filed on or after May 29, 2000, a terminal disclaimer should **not** be required as a condition of granting an untimely petition to withdraw the holding of abandonment. This is because any patent term adjustment is automatically reduced under the provisions of 37 C.F.R. §1.704(c)(4) in applications subject to the patent term adjustment provisions of the American Inventors Protection Act of 1999

[2] *See*: MPEP §711.03(c) (I)(B).

(AIPA) if a petition to withdraw a holding of abandonment is not filed within two months from the mailing date of the notice of abandonment, and if applicant does not receive the notice of abandonment, any patent term adjustment is reduced under the provisions of 37 C.F.R. §1.704(a) by a period equal to the period of time during which the applicant "failed to engage in reasonable efforts to conclude prosecution" (processing or examination) of the application.

Where the record indicates that the applicant intentionally delayed the filing of a petition to withdraw the holding of abandonment, the Office may simply dismiss the petition as untimely (37 C.F.R. §1.181(f)) solely on the basis of such intentional delay in taking action in the application without further addressing the merits of the petition. Obviously, intentional delay in seeking the revival of an abandoned application precludes relief under 37 C.F.R. §1.137(a) or (b) (***).

***

A Petitioner unable to comply with and/or otherwise satisfy these requirements may wish to revive the application: Petitioner may wish to properly file a petition to the Commissioner requesting revival of an application abandoned due to unintentional delay under 37 C.F.R. §1.137(b). (See: http://www.uspto.gov/web/offices/pac/mpep/documents/0700_711_03_c.htm#sect711.03c)

Out of an abundance of caution, Petitioners always are reminded that the filing of a petition under 37 C.F.R. §1.181 does not toll any periods that may be running any action by the Office and a petition seeking relief under the regulation must be filed within two (2) months of the act complained of (*see*: 37 C.F.R. §1.181(f)), and those registered to practice and all others who make representations before the Office **must** inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[3]

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

STATUTES, REGULATIONS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994). And the

[3] *See* supplement of 17 June, 1999. The Patent and Trademark Office is relying on Petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a Petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application.[4],[5]

Moreover, the Office has set forth in the Commentary at MPEP §711.03(c)(I) the showing and timeliness requirements for a proper showing for relief under 37 C.F.R. §1.181 in these matters.

Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

> The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.[6]

Allegations as to the Request to Withdraw the Holding of Abandonment

The guidance in the Commentary at MPEP §711.03(c)(I) specifies the showing required and how it is to be made and supported.

Petitioner appears not to have made the showing required.

---

[4] See: Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. at 53158-59 (October 10, 1997), 1203 Off. Gaz. Pat. Office at 86-87 (October 21, 1997).

[5] The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition. (Therefore, by example, an unavoidable delay in the payment of the Filing Fee might occur if a reply is shipped by the US Postal Service, but due to catastrophic accident, the delivery is not made.) Delays in responding properly raise the question whether delays are unavoidable. Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) And the Petitioner must be diligent in attending to the matter. Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care. (By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.))

[6] In re Mattullath, 38 App. D.C. 497, 514-15 (1912)(quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

CONCLUSION

Accordingly, the petition pursuant to 37 C.F.R. §1.181 is **dismissed**.

ALTERNATIVE VENUE

Should Petitioner wish to revive the application, Petitioner may wish to properly file a petition to the Commissioner requesting revival of an application abandoned due to unintentional delay pursuant to 37 C.F.R. §1.137(b). (See: http://www.uspto.gov/web/offices/pac/mpep/documents/0700_711_03_c.htm#sect711.03c)

A petition to revive on the grounds of unintentional delay must be filed promptly and such petition must be accompanied by the reply, the petition fee, a terminal disclaimer and fee where appropriate and a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional." (The statement is in the form available online.)

Further correspondence with respect to this matter should be addressed as follows:

By Mail:
Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

By hand:
U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By facsimile:
(571) 273-8300
Attn: Office of Petitions

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2[7]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

/John J. Gillon, Jr./
John J. Gillon, Jr.
Senior Attorney
Office of Petitions

[7] The regulations at 37 C.F.R. §1.2 provide:

§1.2 Business to be transacted in writing.

All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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MAILED

JUL 21 2011

OFFICE OF PETITIONS

In re Application of :
Jacobson :
Application No. 11/549,581 : DECISION
Filed/Deposited: 13 October, 2006 :
Attorney Docket No. 1071.P001 US :

This is a decision on the papers filed on 21 April, 2011, for revival of an application abandoned due to unintentional delay pursuant to 37 C.F.R. §1.137(b).

The petition pursuant to 37 C.F.R. §1.137(b) is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 C.F.R. §1.137(b)."

This is **not** a final agency action within the meaning of 5 U.S.C. §704.

As to the Allegations
of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement and/or showing of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee

Petitioner does not appear to have satisfied the requirements under the Rule.

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c)(II).

BACKGROUND

The record reflects as follows:

Petitioner failed to reply timely and properly to the Notice of Missing Parts mailed on 4 January, 2007, with reply due absent an extension of time on or before 4 March, 2007.

The application went abandoned by operation of law after midnight 4 March, 2007.

The Office mailed the Notice of Abandonment on 18 September, 2007.

Petitioner appears to have ignored the Notice of Missing Parts and, possibly, the Notice of Abandonment.

On 11 January, 2011, Petitioner filed a request to withdraw the holding of abandonment pursuant to 37 C.F.R. §1.181, and averred non-receipt, and the papers that Petitioner submitted on 11 January, 2011, via Electronic Filing System (EFS) contained a certificate of transmittal via FAX dated 25 September, 2007, however, there is no showing (e.g., FAX Acknowledgement Receipt and/or statement of first person by the signor of the certificate (i.e., "Joy C. Ngo" (Mr. Ngo) with the 11 January, 2011, transmittal evidencing actual transmittal on 25 September, 2007. Moreover, while there is the averment of non-receipt, the petition did not provide the recitals required under the Rule (set forth and described below), and while a copy of a docket sheet was provided, there was no submission of the due date (4 March, 2007) calendar for the firm as required. And, again, while the petition carried a certificate of FAX transmittal, there is no evidence of record in support of that certificate—and, thus, the appearance certainly is that the petition was not filed timely. The petition was dismissed on 1 March, 2011.

On 21 April, 2011, Petitioner Ken J. Koestner (Reg. No. 33,004) filed, *inter alia*, a petition pursuant to 37 C.F.R. §1.137(b), with fee, and a statement of unintentional delay, an averment that the reply was "filed previously on 09/25/2007" (sic, page 1 of the petition, item 2(A))—for which the record contains absolutely no evidence/showing, and in fact Petitioner filed with the petition a reply in the form of fees, but an incorrect amount based upon fees due on or before 4 March, 2007, and not consistent with present fees for claims in excess of 20 and with no authorization to charge a deposit account for any deficiency. Thus, Petitioner failed to file a proper reply.

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c) as to the showing regarding unintentional delay and a petition pursuant to 37 C.F.R. §1.137(b).

Petitioner has failed to satisfy the requirements under the Rule and discussed above.

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

Out of an abundance of caution, Petitioners always are reminded that those registered to practice and all others who make representations before the Office **must** inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[1]

STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).[2] The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a Petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority.

Unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[3]))

Again, Petitioner's attentions are directed to the guidance in the Commentary at MPEP §711.03(c).

As to the Allegations of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement and/or showing of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee

Petitioner failed to satisfy the requirements under the Rule.

---

[1] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

[2] 35 U.S.C. §133 provides:

35 U.S.C. §133 Time for prosecuting application.

Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

[3] Therefore, by example, an unintentional delay in the reply might occur if the reply and transmittal form are to be prepared for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely deposited for shipment.

CONCLUSION

Accordingly, the petition under 37 C.F.R. §1.137(b) is **dismissed**.

Further correspondence with respect to this matter should be addressed as follows:

By Mail:
Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

By hand:
U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By facsimile:
(571) 273-8300
Attn: Office of Petitions

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2[4]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

/John J. Gillon, Jr./
John J. Gillon, Jr.
Senior Attorney
Office of Petitions

---

[4] The regulations at 37 C.F.R. §1.2 provide:

§1.2 Business to be transacted in writing.

All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

KOESTNER PATENT LAW
2192 MARTIN ST.
SUITE 150
IRVINE CA 92612

MAILED
DEC 20 2011
OFFICE OF PETITIONS

In re Application of :
Jacobson :
Application No. 11/549,581 : DECISION
Filed/Deposited: 13 October, 2006 :
Attorney Docket No. 1071.P001 US :

This is a decision on the papers filed on 18 October, 2011, for revival of an application abandoned due to unintentional delay pursuant to 37 C.F.R. §1.137(b).

The petition pursuant to 37 C.F.R. §1.137(b) is **GRANTED**.

As to the Allegations
of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement and/or showing of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c)(II).

BACKGROUND

The record reflects as follows:

Petitioner failed to reply timely and properly to the Notice of Missing Parts mailed on 4 January, 2007, with reply due absent an extension of time on or before 4 March, 2007.

The application went abandoned by operation of law after midnight 4 March, 2007.

The Office mailed the Notice of Abandonment on 18 September, 2007.

Petitioner appears to have ignored the Notice of Missing Parts and, possibly, the Notice of Abandonment.

On 11 January, 2011, Petitioner filed a request to withdraw the holding of abandonment pursuant to 37 C.F.R. §1.181, and averred non-receipt, and the papers that Petitioner submitted on 11 January, 2011, via Electronic Filing System (EFS) contained a certificate of transmittal via FAX dated 25 September, 2007, however, there is no showing (e.g., FAX Acknowledgement Receipt and/or statement of first person by the signor of the certificate (i.e., "Joy C. Ngo" (Mr. Ngo) with the 11 January, 2011, transmittal evidencing actual transmittal on 25 September, 2007. Moreover, while there is the averment of non-receipt, the petition did not provide the recitals required under the Rule (set forth and described below), and while a copy of a docket sheet was provided, there was no submission of the due date (4 March, 2007) calendar for the firm as required. And, again, while the petition carried a certificate of FAX transmittal, there is no evidence of record in support of that certificate—and, thus, the appearance certainly is that the petition was not filed timely. The petition was dismissed on 1 March, 2011.

On 21 April, 2011, Petitioner Ken J. Koestner (Reg. No. 33,004) filed, *inter alia*, a petition pursuant to 37 C.F.R. §1.137(b), with fee, and a statement of unintentional delay, an averment that the reply was "filed previously on 09/25/2007" (sic, page 1 of the petition, item 2(A))—for which the record contains absolutely no evidence/showing, and in fact Petitioner filed with the petition a reply in the form of fees, but an incorrect amount based upon fees due on or before 4 March, 2007, and not consistent with present fees for claims in excess of 20 and with no authorization to charge a deposit account for any deficiency. Thus, Petitioner failed to file a proper reply and the petition was dismissed on 21 July, 2011.

On 18 October, 2011, Petitioner re-advanced his petition (the petition fee previously paid) with a reply in the form of fees due, and made the statement of unintentional delay.

> *The record (including the petition filed on 18 October, 2011) does not necessitate a finding that the delay between midnight 18 September, 2007 (the date of abandonment), and 18 October, 2011 (the date of the filing of grantable petition), was not unintentional.*
>
> *Rather, the Patent and Trademark Office is relying in this matter on the duty of candor and good faith of Petitioner/Counsel Ken J. Koestner (Reg. No. 33,004) when accepting Petitioners' representation that the delay in filing the response was unintentional.*[1]

[1] See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. ' 10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 C.F.R. ' 1.137(b) to the Patent and Trademark Office).

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c) as to the showing regarding unintentional delay and a petition pursuant to 37 C.F.R. §1.137(b).

with fee, reply in the form of an amendment, and made the statement of unintentional delay.

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

Out of an abundance of caution, Petitioners always are reminded that those registered to practice and all others who make representations before the Office **must** inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[2]

STATUTES, REGULATIONS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994). And the regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a Petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application.[3],[4]

Moreover, the Office has set forth in the Commentary at MPEP §711.03(c)(I) the showing and timeliness requirements for a proper showing for relief under 37 C.F.R. §1.181 in these matters.

Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

> The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by

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[2] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §11.18, formerly §10.18, to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

[3] See: Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. at 53158-59 (October 10, 1997), 1203 Off. Gaz. Pat. Office at 86-87 (October 21, 1997).

[4] The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition. (Therefore, by example, an unavoidable delay in the payment of the Filing Fee might occur if a reply is shipped by the US Postal Service, but due to catastrophic accident, the delivery is not made.) Delays in responding properly raise the question whether delays are unavoidable. Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) And the Petitioner must be diligent in attending to the matter. Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care. (By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.))

> prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.[5]

As to Allegations of
Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee.

It appears that the requirements under the rule have been satisfied.

CONCLUSION

Accordingly, the petition pursuant to 37 C.F.R. §1.137(b) is **granted**.

The instant application is released to the Office of Patent Applications Processing (OPAP) for further processing in due course.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the instant decision to ensure that the revival has been acknowledged by the OPAP in response to this decision. It is noted that all inquiries with regard to status need be directed to the OPAP where that change of status must be effected—that does not occur in the Office of Petitions.

---

[5] In re Mattullath, 38 App. D.C. 497, 514-15 (1912)(quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however , that all practice before the Office is in writing (see: 37 C.F.R. §1.2[6]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

/John J. Gillon, Jr./
John J. Gillon, Jr.
Senior Attorney
Office of Petitions

---

[6] The regulations at 37 C.F.R. §1.2 provide:

§1.2 Business to be transacted in writing.

All business with the Patent and Trademark Office should be transacted in writing. The personal attdance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

UNITED STATES PATENT AND TRADEMARK OFFICE

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APEX JURIS, PLLC
12733 LAKE CITY WAY NORTHEAST
SEATTLE WA 98125

MAILED
JUL 22 2011
OFFICE OF PETITIONS

In re Application of	:	
Marty Williams	:	
Application No. 11/549,651	:	DECISION ON PETITION
Filed: October 15, 2006	:	
Attorney Docket No. 10.18.19.USP	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 5, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a proper and timely manner to the Notice to File Missing Parts of Nonprovisional Application (Notice) mailed January 22, 2007. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on March 23, 2007. A Notice of Abandonment was mailed October 10, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) an Oath or Declaration, Replacement Drawings, the $65.00 Surcharge fee, the $85.00 Basic filing fee; the $270.00 Search fee and the $110.00 Examination fee; (2) the petition fee of $810.00, and (3) a proper statement of unintentional delay.

Further, it is not apparent whether the statement of unintentional delay was signed by a person who would have been in a position of knowing that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Nevertheless, in accordance with 37 CFR 10.18, the statement is accepted as constituting a certification of unintentional delay. However, in the event that petitioner has no knowledge that the delay was unintentional, petitioner must make such an inquiry to ascertain that, in fact, the delay was unintentional. If petitioner discovers that the delay was intentional, petitioner must notify the Office.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

This application is being referred to the Office of Patent Application Processing for further processing in accordance with this decision on petition.

/Joan Olszewski/
Joan Olszewski
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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BANNER & WITCOFF, LTD.
28 STATE STREET
SUITE 1800
BOSTON MA 02109-1701

MAILED

NOV 22 2010

OFFICE OF PETITIONS

In re Application of :
Dale G. Brown, et al. :
Application No. 11/549,670 :
Filed: October 16, 2006 :
Attorney Docket No. **004526/00074** :

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the request to withdraw as attorney of record under 37 CFR § 1.36, filed October 28, 2010.

The request is **NOT APPROVED**.

The request cannot be approved because it lacks a forwarding correspondence address of the first named inventor or a properly intervening assignee.

If the forwarding correspondence address is to the assignee, the Office will only accept correspondence address changes to the most current address information provided for the assignee of the entire interest *that properly became of record under 37 CFR 3.71.* 37 CFR 3.71(c) states:

> *An assignee becomes of record either in a national patent application or a reexamination proceeding by filing a statement in compliance with § 3.73(b) that is signed by a party who is authorized to act on behalf of the assignee.*

The assignee must establish its ownership of the patent to the satisfaction of the Director. In this regard, the statement under 37 CFR 3.73(b) must have either: (i) documentary evidence of a chain of title from the original owner to the assignee (*e.g.*, copy of an executed assignment), and a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was or concurrently is being submitted for recordation pursuant to § 3.11; or (ii) a statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (*e.g.*, reel and frame number).

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-2991.

Terri Johnson
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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BANNER & WITCOFF, LTD.
28 STATE STREET
SUITE 1800
BOSTON, MA 02109-1701

MAILED

APR 11 2011

OFFICE OF PETITIONS

In re Application of :
Dale G. Brown, et al. :
Application No. 11/549,670 : DECISION ON PETITION
Filed: October 16, 2006 : TO WITHDRAW
Attorney Docket No. 004526/00074 : FROM RECORD
:

This is a decision on the renewed Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed March 23, 2011.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a).

The request was signed by Ernest V. Linek on behalf of all attorneys of record. All attorneys/agents have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

All future correspondence will be directed to the first named inventor Dale Brown at the address indicated below.

Telephone inquiries concerning this decision should be directed to Terri Johnson at 571-272-2991.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

cc: **DALE BROWN**
WHITEHILL ORAL TECHNOLOGIES, INC.
12701 EXECUTIVE DRIVE
SUITE 614
STAFFORD TX 77477

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/549,670	10/16/2006	Dale G. Brown	004526/00074

CONFIRMATION NO. 7400

22910
BANNER & WITCOFF, LTD.
28 STATE STREET
SUITE 1800
BOSTON, MA 02109-1701

POWER OF ATTORNEY NOTICE

OC000000047023639

Date Mailed: 04/07/2011

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 03/23/2011.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

/tsjohnson/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

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SCHWEGMAN, LUNDBERG & WOESSNER/BSC-CRM
PO BOX 2938
MINNEAPOLIS, MN 55402

MAILED
AUG 10 2010
OFFICE OF PETITIONS

In re Application of	:	
Yinghong Yu, et al.	:	
Application No. 11/549,676	:	DECISION GRANTING PETITION
Filed: October 16, 2006	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 279.A83US2	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed August 9, 2010, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). *See* 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on July 16, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries regarding this decision should be directed to undersigned at (571) 272-1642. All other inquiries regarding the examination or status of this application should be directed to the Technology Center.

This application is being referred to Technology Center AU 3766 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed amendment.

/AMW
April M. Wise
Petitions Examiner
Office of Petitions

[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.*

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COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Paper No.

Goodwin Procter LLP
Attn: Patent Administrator
135 Commonwealth Drive
Menlo Park CA 94025-1105

MAILED

NOV 08 2010

OFFICE OF PETITIONS

In re Application of :
Freeman et al. : DECISION ON PETITION
Application No. 11/549,677 :
Filed: October 16, 2006 :
Atty Docket No. 38187-2860.US :

This is a decision on the PETITION FOR CORRECTION OF ORDER OF INVENTORS filed September 21, 2010.

The petition is **GRANTED**.

Petitioner requests that the order of inventors be corrected. The petition includes payment of the $400 petition fee.

The order of the names of the inventors has been changed as follows:

1. Dominique M. Freeman
2. Don Alden
3. Dirk Bloecker

However, as to the order of inventorship, notwithstanding this decision, a supplemental application data sheet setting forth the correct order of inventors should be filed. **As stated in MPEP 605.04(f), applicants are strongly encouraged to submit an application data sheet showing the new order of inventor names to ensure appropriate printing of the inventor names in any patent to issue. Such should be filed prior to the mailing of the notice of allowance to avoid entry of any period of reduction in patent term adjustment.**

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, VA 22313-1450
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PAVILION INTEGRATION CORPORATION
2380 QUME DRIVE, SUITE G
SAN JOSE, CA 95131

MAILED

JUL 28 2011

OFFICE OF PETITIONS

In re Application of :
Ningyi LUO, et *al.* :
Application No. 11/549,696 : DECISION ON PETITION
Filed: October 16, 2006 : UNDER 37 CFR 1.137(b)
Attorney Docket No. **PVLN-06-008C** :

This is a decision on the petition under 37 CFR 1.137(b), filed February 7, 2011, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is not a final agency action within the meaning of 5 U.S.C. § 704.

The application became abandoned for failure to timely reply within the meaning of 37 CFR 1.113 to the final Office action, mailed February 19, 2010, which set a shortened statutory period for reply of three (3) months. A three (3) month extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned on May 20, 2011.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. *See* MPEP 711.03(c)(II)(C) and (D). The instant petition lacks items (1) and (3) above.

Turning first to item (3) above, the statement of unintentional delay is not considered at this time to be a properly submitted statement. In this regard, the petition containing the statement of unintentional delay is signed by Sheng-Bai ZHU, who is one of the

applicants in the above-identified application. Petitioner's attention is directed to 37 CFR 1.33(b), which states.

> *Amendments and other papers.* Amendments and other papers, except for written assertions pursuant to § 1.27(c)(2)(ii) of this part, filed in the application must be signed by:
>
> (1) A registered patent attorney or patent agent of record appointed in compliance with § 1.32(b);
>
> (2) A registered patent attorney or patent agent not of record who acts in a representative capacity under the provisions of § 1.34;
>
> (3) An assignee as provided for under § 3.71(b) of this chapter; or
>
> (4) **All of the applicants (§ 1.41(b)) for patent**, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.

An unsigned amendment (or other paper) or one not properly signed by a person having authority to prosecute the application is not entered. This applies, for instance, where the amendment (or other paper) is signed by only one of two applicants and the one signing has not been given a power of attorney by the other applicant.

Therefore, **as the petition containing the statement of unintentional delay is not signed by all the inventors** and the record herein fails to disclose that petitioner herein (Mr. ZHU) was ever given a power of attorney to act on behalf of the other inventors, or that he is an assignee of the entire interest and has complied with the provisions of 37 CFR 3.73(b), the petition is considered to not contain a proper statement of unintentional delay. In this regard, 37 CFR 3.73(b) provides:

> (1) In order to request or take action in a patent or trademark matter, the assignee must establish its ownership of the patent or trademark property of paragraph (a) of this section to the satisfaction of the Director. The establishment of ownership by the assignee may be combined with the paper that requests or takes the action. Ownership is established by submitting to the Office a signed statement identifying the assignee, accompanied by either:
>
> (i) Documentary evidence of a chain of title from the original owner to the assignee (e.g., copy of an executed assignment * * * For patent matters only, the submission of the documentary evidence must be accompanied by a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was or concurrently is being submitted for recordation pursuant to § 3.11; or
>
> (ii) A statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (e.g., reel and frame number).

(2) The submission establishing ownership must show that the person signing the submission is a person authorized to act on behalf of the assignee by:

(i) Including a statement that the person signing the submission is authorized to act on behalf of the assignee; or
(ii) Being signed by a person having apparent authority to sign on behalf of the assignee, *e.g.*, an officer of the assignee.

(c) For patent matters only:

(1) Establishment of ownership by the assignee must be submitted prior to, or at the same time as, the paper requesting or taking action is submitted.
(2) If the submission under this section is by an assignee of less than the entire right, title and interest, such assignee must indicate the extent (by percentage) of its ownership interest, or the Office may refuse to accept the submission as an establishment of ownership.

In view of the above, and as it appears that Mr. ZHU is signing the statement of unintentional delay as an assignee, then compliance with 37 CFR 3.73(b) must be satisfied. The 3.73(b) statement submitted concurrently with the petition is considered improper in that the reel and frame information was omitted. It is also noted that the 3.73(b) statement is not properly signed by all inventors. A blank certificate under 37 CFR 3.73(b) is enclosed with this decision for petitioner's convenience.

As to item (1) above, no reply has been received for consideration. Petitioner indicates that a Request for Continued Examination (RCE) fee was paid on September 1, 2010. Office records indicate receipt of this fee. However, no signed request for RCE has been received.

In sum, petitioner must submit a petition containing a statement of unintentional delay and reply (amendment) signed by all the inventors, **unless** petitioner herein is the assignee of the entire right, title and interest in the instant application, then compliance with 37 CFR 3.73(b) must be satisfied, which can be accomplished by completion of the enclosed certificate under 37 CFR 3.73(b).

The application file does not indicate a change of address has been filed in this case, although the address given on the petition differs from the address of record. A change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Customer Service Window
Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: (703) 872-9306
ATTN: Office of Petitions

Any questions concerning this matter may be directed to Monica A. Graves at (571) 272-7253.

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

cc: **SHENG-BAI ZHU**
43296 CEDARWOOD DRIVE
FREMONT, CA 94538

Enclosures: (1) **PTO/SB/96 - Certificate under 37 CFR 3.73(b) and Privacy Act Statement**
(2) **PTO/SB/30 - RCE Transmittal**

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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ASHKAN NAJAFI, P.A.
6817 SOUTHPOINT PARKWAY
SUITE 2301
JACKSONVILLE FL 32216

MAILED

JUN 20 2011

OFFICE OF PETITIONS

In re Application of :
THOMAS J. MALANOWICZ ET AL :
Application No. 11/549,717 : DECISION ON PETITION
Filed: October 16, 2006 :
Attorney Docket No. UP 171 :

This is a decision on the petition, filed March 28, 2011, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

The application was held abandoned for failure to reply in a timely manner to the Notice Requiring Excess Claims Fees (Notice) mailed September 8, 2010, which set a shortened statutory period for reply of one (1) month or thirty (30) days whichever is longer. The Notice of Abandonment was mailed on March 10, 2011.

Petitioner asserts that the Notice dated September 8, 2010, was not received.

A review of the written record indicates no irregularity in the mailing of the Notice, and, in the absence of any irregularity, there is a strong presumption that the Notice was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Notice was not in fact received. In this regard, the showing required to establish the failure to receive the Notice must consist of the following:

(1) a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.

(2) Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received.

(3) A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required. A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the **master docket report** showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question. See MPEP §711.03(c)(I)(A).

See MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).

The petition satisfies the above-stated requirements. Accordingly, the application was not abandoned in fact.

In view of the above, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

This application is being referred to the Technology Center technical support staff of Art Unit 1774 for **re-mailing** the Notice of September 8, 2010. The period for reply will run from the mailing date of the Office action.

/Ramesh Krishnamurthy/
Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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ANDRUS, SCEALES, STARKE & SAWALL, LLP
100 EAST WISCONSIN AVENUE, SUITE 1100
MILWAUKEE, WI53502

MAILED

DEC 13 2010

OFFICE OF PETITIONS

Applicants: Paul Marrs, et al.
Appl. No.: 11/549754
Filing Date: October 16, 2006.
Title: METHOD AND APPARATUS FOR AIRWAY COMPENSATION CONTROL
Attorney Docket No.: 199993 (5024-00348)
Pub. No.: US 2008/0091117 A1
Pub. Date: April 17, 2008

This is a decision on the request for a corrected patent application publication under 37 CFR 1.221(b), received on April 22, 2010 for the above-identified application.

The request is dismissed.

Applicant request that the application be republished as the original publication contains the incorrect, abstract, drawings, specification, and claims.

37 CFR 1.221 (b) is applicable "only when the Office makes a material mistake which is apparent from Office records.... Any request for a corrected publication or revised patent application publication other than provided as provided in paragraph (a) of this section must be filed **within two months** from the date of the patent application publication. **This period is not extendable.**" A material mistake must affect the public's ability to appreciate the technical disclosure of the patent application publication, to determine the scope of the patent application publication, or to determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent. [1]

The request for corrected publication, received on April 22, 2010, was not timely filed under 37 CFR 1.221(b).

Due to the nature of the error in this publication, the office will *sua sponte* publish a corrected patent application publication. The corrected patent application publication will be published in due course, unless the application is allowed and the patent issues before the application is republished.

[1] Changes to Implement Eighteen-Month Publication of Patent Applications, 65 FR 57023, 57038 (Sept. 20, 2000), 1239, Off. Gaz. Pat. Office Notices 63, 75 (Oct. 10, 2000) (final rule).

A guide for filing a request for a Pre-Grant Publication, such as a request for republication, may be found on the link below:

http://www.uspto.gov/patents/process/file/efs/guidance/index.jsp

http://www.uspto.gov/ebc/portal/efs/pgpub_quickstart.pdf

Inquiries relating to this matter may be directed to Mark Polutta at (571) 272-7709.

Mark Polutta
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450

MAILED
MAR 22 2011
OFFICE OF PETITIONS

Edward F. Murphy, III
Lord Corporation
Patent & Legal Services
111 Lord Drive
P.O. Box 8012
Cary, North Carolina 27512-8012

In re Application of :
Donald RUSSELL et al. : DECISION GRANTING PETITION
Application No. 11/549,774 : UNDER 37 CFR 1.137(b)
Filed: 16 October 2006 :
Atty. Docket No.: IR-3267(MRW) V2 CON:

This is a decision on the petition under 37 CFR 1.137(b), filed 4 January 2011, to revive the above-identified application ("Application").

The petition is **GRANTED**.

The Application became abandoned for failure to reply in a timely manner to the Notice of Allowance and Fee(s) Due mailed 7 September 2010 ("Notice"), which set a statutory period of reply of three (3) months. The application became abandoned on 8 December 2010, with notification mailed 27 December 2010.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a Statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d).

The petition satisfies the conditions for revival pursuant to 37 CFR 1.137(b) by including (1) a reply in the form of payment of the Issue and Publication fees, (2) a petition fee of $1620.00, and (3) a Statement of unintentional delay. The reply to the Notice is accepted as having been unintentionally delayed.

General inquiries relating to this decision should be directed to Robert DeWitty, Petitions Examiner, Office of Petitions (571-272-8427).

The application file will be referred to Office of Data Management for further action on the filed Response.

/Ramesh Krishnamurthy/

for David Bucci
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

Pepper Hamilton LLP
50th Floor
One Mellon Center
500 Grant Street
Pittsburgh, PA 15219

Mail Date: 08/05/2010

Applicant	: Dieter Freitag	: DECISION ON REQUEST FOR
Patent Number	: 7666932	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/549,789	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 10/16/2006	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **219** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 12-3-10

TO SPE OF : ART UNIT 3714

SUBJECT : Request for Certificate of Correction for Appl. No.: 11549855 Patent No.: 7824263

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (C of C)
Randolph Square – 9D10-E
Palm Location 7580

Omega Lewis
Certificates of Correction Branch

703-756-1575

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

X **Approved**	**All** changes apply.
☐ **Approved in Part**	Specify below which changes **do not** apply.
☐ **Denied**	State the reasons for denial below.

Comments: Approved

/David L Lewis/ 3714
SPE Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Paul, Hastings, Janofsky & Walker, LLP
875 15th Street, NW
Washington, DC 20005

MAILED

FEB 16 2011

OFFICE OF PETITIONS

In re Application of :
Kevin Stewart Dick, et. al. :
Application No. 11/549,880 : DECISION ON PETITION
Filed: October 16, 2006 : TO WITHDRAW FROM
Attorney Docket No. NETW-003/01US :: RECORD
314154-2008

This is a decision on the renewed Request to Withdraw as attorney or agent of record under 37 CFR §§ 1.36(b) or 10.40, filed December 8, 2010.

The request is **MOOT**.

A review of the file record indicates that power of attorney to Customer Number 36183 was revoked by the assignee of the above application on January 12, 2011. Accordingly, the request to withdraw under 37 CFR §§ 1.36(b) or 10.40 is unnecessary.

All future communications from the Office will be directed to the new address of record until otherwise notified by applicant.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Alexandria, VA 22313-1450
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STMICROELECTRONICS, INC.
MAIL STATION 2346
750 CANYON DRIVE, SUITE 300
COPPELL, TX 75019

MAILED

MAY 24 2011

OFFICE OF PETITIONS

In re Application of	:	
Wendong Hu	:	
Application No. 11/549,925	:	DECISION DISMISSING PETITION
Filed: October 16, 2006	:	UNDER 37 CFR 1.313(a)
Attorney Docket No. 05-S-071	:	

This is a decision on the petition under 37 CFR 1.313(a), filed May 23, 2011, requesting withdrawal of the above-identified application from issue.

The petition is **DISMISSED** as moot for the reasons stated below.

A review of the file record discloses that a Notice of Allowance and Fee(s) Due was mailed on March 1, 2011, with the issue fee being due on or before June 1, 2011.

The filing of a petition under 37 CFR 1.313(a) is unnecessary, since the mere filing of an RCE and submission will effectively withdraw an application from issue prior to payment of the issue fee. In view thereof, the petition to withdraw from issue is dismissed as involving a moot issue. *Note* MPEP §§ 706.07(h)(IX) and 1308.

Telephone inquiries concerning this decision may be directed to undersigned at (571) 272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

The matter is being referred to Technology Center AU 2462 for appropriate processing of the RCE filed May 23, 2011, and for consideration of the concurrently filed information disclosure statement.

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20110504

DATE : May 04, 2011

TO SPE OF : ART UNIT 2622

SUBJECT : Request for Certificate of Correction on Patent No.: 7864211 B2

A response is requested with respect to the accompanying request for a certificate of correction.

Please complete this form and return with file, within **7** days to:
Certificates of Correction Branch - ST (South Tower) 9A22
Palm location **7590** - Tel. No. (703) 305-8309

With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Thank You For Your Assistance **Certificates of Correction Branch**

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriated box.

☒ **Approved** All changes apply.

☐ **Approved in Part** Specify below which changes **do not** apply.

☐ **Denied** State the reasons for denial below.

Comments:

/LIN YE/
Supervisory Patent Examiner.Art Unit 2622

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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OCT 11 2011

OFFICE OF PETITIONS

INTERNATIONAL FLAVORS & FRAGRANCES INC.
521 WEST 57TH ST
NEW YORK NY 10019

In re Application of
Anastasiou, et al.
Application No. 11/550,002
Filed: October 17, 2006
Atty. Dkt. No.: IFF-120-1

: DECISION ON PETITION

This decision is in response to the petition under 37 CFR 1.137(b), filed October 4, 2011.

The petition is **GRANTED**.

The application became abandoned July 1, 2011 for failure to timely submit a proper reply to the non-final Office action mailed March 31, 2011. The non-final Office action set a three month shortened statutory period of time for reply. This decision precedes Notice of Abandonment.

A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by: (1) the required reply to the outstanding Office action or notice, unless previously filed; (2) the petition fee as set forth in 37 C.F.R. § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee set forth in 37 C.F.R. § 1.20(d)) required pursuant to 37 C.F.R. § 1.137(c).

The instant petition has been carefully reviewed and found in compliance with the requirements set forth above.

This application is being forwarded to Group Art Unit 1765 for further processing.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

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JUN 13 2011

OFFICE OF PETITIONS

MICHAEL BEST & FRIEDRICH LLP
100 EAST WISCONSIN AVENUE
SUITE 3300
MILWAUKEE, WI 53202

In re Patent No. 7,470,688 :
Issue Date: December 30, 2008 :
Application No.: 11/550,004 : ON PETITION
Filed: October 17, 2006 :
Attorney Docket No.: 065435-9056-US02 :

This is a decision in response to a petition filed May 3, 2011, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **GRANTED**.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3204. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificates of Correction Branch at (703) 756-1814.

The Certificates of Correction Branch will be notified of this decision granting the petition under 37 CFR 3.81(b) and directing issuance of the requested Certificate of Correction.

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

[1] *See* MPEP 1309, subsection II; and Official Gazette of June 22, 2004.

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HOPE BALDAUFF HARTMAN, LLC
1720 PEACHTREE STREET, N.W
SUITE 1010
ATLANTA GA 30309

MAILED
AUG 12 2011
OFFICE OF PETITIONS

In re Application of	:	
Mitch Morgan et al.	:	
Application No. 11/550,168	:	DECISION ON PETITION
Filed: October 17, 2006	:	
Attorney Docket No. **60101.0002USU1**	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 15, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, May 12, 2008, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on August 13, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a continuing application under 37 CFR 1.53(b); (2) the petition fee of $810; and (3) a proper statement of unintentional delay.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

This application is being revived solely for purposes of continuity. As continuity has been established by this decision, the application is again abandoned in favor of continuing application No. 13/048,404.

Telephone inquiries concerning this decision should be directed to Tredelle Jackson at (571) 272-2783.

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

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SYNTHES
1302 WRIGHTS LANE EAST
WEST CHESTER, PA 19380

MAILED
JUN 24 2011
OFFICE OF PETITIONS

In re Patent No. 7,867,257
Issue Date: January 11, 2011
Application No. 11/550,280
Filed: October 17, 2006
Attorney Docket No. 001227/1401

DECISION ON PETITION

This is a decision on the petition, filed, May 10, 2011, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the assignee's name on the Fee(s) Transmittal form PTOL-85(b) by way of a certificate of correction in the patent.

The request is **GRANTED**.

Petitioner states that the correct assignee's name is N Spine, Inc., petitioner further states that the assignee's name was incorrectly indicated on the Fee(s) Transmittal form PTOL-85(b) at the time of payment of the issue fee. Accordingly, petitioner requests that a certificate of correction be issued to reflect the correct assignee on the front page of the Letters Patent.

37 CFR 3.81(b), effective June 25, 2004, reads:

> *After payment of the issue fee:* Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in § 3.11 before issuance of the patent, and must include a request for a certificate of correction under § 1.323 of this chapter (accompanied by the fee set forth in § 1.20(a) and the processing fee set forth in § 1.17(i) of this chapter.

The request was accompanied by a certificate of correction (and fee) as required by 3.81(b). Further, Office assignment records reflect that N Spine, Inc., was the assignee of record before issuance of the patent. Accordingly, as the request complies with the provisions of 37 CFR 3.81(b), it is appropriate for a certificate of correction to be processed.

---

[1] See MPEP 1309, subsection II; and Official Gazette of June 22, 2004.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Inquiries concerning this decision should be directed to Alicia Kelley-Collier at (571) 272-6059. Any questions concerning the issuance of a certificate of correction should be directed to the Certificates of Correction Branch at (571) 272-4200.

This matter is being referred to the Certificates of Correction Branch for processing of a certificate of correction.

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

cc: JEREMY ESTES
CIRA CENTRE, 12TH FLOOR
2929 ARCH STREET
PHILADELPHIA, PA 19104

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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BANNER & WITCOFF, LTD
AND ATTORNEYS FOR CLIENT NUMBER 011738
10 SOUTH WACKER DRIVE
SUITE 3000
CHICAGO IL 60606

MAILED

APR 21 2011

OFFICE OF PETITIONS

In re Application of :
FREI, Mark G. et al. :
Application No. 11/550,294 : DECISION ON PETITION
Filed: October 17, 2006 : TO WITHDRAW
Attorney Docket No. **011738.00316** : FROM RECORD
:

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed April 05, 2011.

The request is **NOT APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. The Office requires the practitioner(s) requesting withdrawal to certify that he, she, or they have: (1) given reasonable notice to the client, prior to the expiration of the response period, that the practitioner(s) intends to withdraw from employment; (2) delivered to the client or a duly authorized representative of the client all papers and property (including funds) to which the client is entitled; and (3) notified the client of any responses that may be due and the time frame within which the client must respond, pursuant 37 CFR 10.40(c).

The request cannot be approved because no change of address was provided.

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

Telephone inquiries concerning this decision should be directed to Tredelle Jackson at 571-272- 2783.

/Tredelle D. Jackson/
Paralegal Specialist
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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BANNER & WITCOFF, LTD
AND ATTORNEYS FOR CLIENT NUMBER 011738
10 SOUTH WACKER DRIVE
SUITE 3000
CHICAGO, IL 60606

MAILED
JUN 06 2011
OFFICE OF PETITIONS

In re Application of :
FRIE, Mark G. et al. :
Application No. 11/550,294 : DECISION ON PETITION
Filed: October 17, 2006 : TO WITHDRAW
Attorney Docket No. P0011107.06 : FROM RECORD
:

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed May 24, 2011.

The request is **MOOT** because a revocation of power of attorney has been previously filed.

A review of the file record indicates that the power of attorney to BANNER & WITCOFF, LTD has been revoked by the assignee of the patent application on June 06, 2011. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

All future communications from the Office will continue to be directed to the below-listed address until otherwise notified by applicant.

Telephone inquires concerning this decision should be directed to Tredelle Jackson at 571-272-2783.

/Tredelle D. Jackson/
Petitions Examiner
Office of Petitions

cc: **MEDTRONIC INC. (NEURO)**
710 MEDTRONIC PARKWAY NE
MS: LC340 LEGAL PATENTS
MINNEAPOLIS MN 55432

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MANUEL FERNANDEZ
811 SE 11TH AVENUE
DEERFIELD BEACH FL 33441

MAILED

DEC 12 2011

OFFICE OF PETITIONS

In re Application of
Fernandez
Application No. 11/550,306
Filed: February 6, 2007
For: DIGITAL PRESSURIZATION COMPOUND TERMINAL TG6000X

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 23, 2011, to revive the above-identified application.

The petition is **GRANTED**.

This above-identified application became abandoned for failure to timely file a reply to a non-final Office action mailed April 15, 2009. The Office Action set a three (3) month shortened statutory period for reply. No extensions of time were obtained under the provisions of 37 CFR 1.136(a). Accordingly, this application became abandoned on July 16, 2009. A Notice of Abandonment was mailed on November 25, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment and specification (2) the petition fee of $930.00, and (3) a statement of unintentional delay.

It should be noted that the power of attorney filed November 23, 2011 will not be entered as it is not signed by legal representative Sabrina Esther Fernandez. See 37 CFR 1.33.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3215.

This application is being referred to Technology Center AU 3753 for appropriate action by the Examiner in the normal course of business on the reply received

Charlema Grant
Attorney Advisor
Office of Petitions

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ARENT FOX LLP
1050 CONNECTICUT AVENUE, N.W.
SUITE 400
WASHINGTON DC 20036

MAILED

FEB 01 2011

OFFICE OF PETITIONS

In re Patent No. 7,742,645 :
Issue Date: 22 June, 2010 :
Application No. 11/550,436 : ON PETITION
Filed: 18 October, 2006 :
Attorney Docket No. 101229-00073 :

This is a decision on the petition filed on 2 August, 2010, pursuant to 37 C.F.R. §1.183 and §3.81(b) to correct, *inter alia*, the name of the assignee on the front page of the above-identified patent by way of a certificate of correction under 37 C.F.R. §1.323.

The request is **GRANTED**— upon the instant showing of the recordation of the assignment on 18 October, 2006, and the location of recordation as Reel/Frame 018404/0039.

Petitioner requests issuance of a certificate of correction the identification of the Assignee(s) to "**FUJITSU DEVICES INC (Tokyo, Japan)**" of the substance/form of that submitted therewith.

The Certificates of Correction Branch will be notified of this decision granting the petition under 37 C.F.R. §3.81(b) and directing issuance of the requested Certificate of Correction.

Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

Patent No. 7,742,645
Application No. 11/550,436

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2[1]) regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

/John J. Gillon, Jr./
John J. Gillon, Jr.
Senior Attorney
Office of Petitions

---

[1] The regulations at 37 C.F.R. §1.2 provide:

§1.2 Business to be transacted in writing.

All business with the Patent and Trademark Office should be transacted in writing.The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation,or understanding in relation to which there is disagreement or doubt.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BASF CATALYSTS LLC
100 CAMPUS DRIVE
FLORHAM PARK, NJ 07932

MAILED

FEB 09 2011

OFFICE OF PETITIONS

In re Application of :
Fuller et al. :
Application No. 11/550,475 : DECISION ON PETITION
Filed: October 18, 2006 :
Attorney Docket No. 5099B :

This is a decision on the petition, filed March 20, 2008, which is being treated as a petition under 37 CFR 1.181 (no fee), requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely or properly reply to the non-final Office action mailed July 5, 2007, which set a shortened statutory period for reply of three (3) months. Accordingly, a reply was due on or before October 5, 2007. A Notice of Abandonment was mailed February 6, 2008.

Petitioner states that a reply was in fact timely filed. To support this assertion, petitioner has submitted a copy of a return postcard which acknowledges receipt by the U.S. Patent and Trademark Office (USPTO) on October 5, 2007. A copy of the previously submitted reply accompanies the petition.

The reply acknowledged as having been received in the USPTO on October 5, 2007, is not in the file record of the application file and has not to date been located. However, MPEP 503 states that "[a] post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO." Accordingly, it is concluded that the complete reply submitted on October 5, 2007, was timely received in the USPTO but lost after receipt thereof.

In view of the above, the holding of abandonment is hereby withdrawn and the application restored to pending status.

The copy of the reply supplied with the petition will be accepted in place of the reply shown to have been received by the USPTO on October 5, 2007.

Telephone inquiries concerning this decision should be directed to Alicia Kelley at (571) 272-6059.

This application is being referred to Technology Center AU 1793 for appropriate action by the Examiner in the normal course of business on the reply received October 5, 2007.

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

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Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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BROSEMER, KOLEFAS & ASSOCIATES, LLC (NECL)
ONE BETHANY ROAD BUILDING 4 – SUITE #58
HAZLET NJ 07730

MAILED

DEC 06 2010

OFFICE OF PETITIONS

In re Application of
Philip Nan JI, et al
Application No. 11/550,481
Filed: October 18, 2006
Attorney Docket No. 05029

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 3, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely pay the issue and publication fees on or before September 13, 2010, as required by the Notice of Allowance and Fee(s) Due, mailed June 11, 2010, which set a statutory period for reply of three (3) months. Accordingly, the application became abandoned on September 14, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1510 and publication fee of $300; (2) the petition fee of $1620; and (3) an adequate statement of unintentional delay.

37 CFR 1.137(b)(3) requires a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." Since the statement appearing in the petition varies from the language required by 37 CFR 1.137(b)(3), the statement is being construed as the required statement. Petitioner must notify the Office if this is **not** a correct reading of the statement appearing in the petition.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

The application is being referred to the Office of Data Management for processing into a patent.

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

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WONG, CABELLO, LUTSCH, RUTHERFORD & BRUCCULERI, L.L.P.
20333 SH 249 6TH FLOOR
HOUSTON, TX 77070

MAILED
MAR 31 2011
OFFICE OF PETITIONS

In re Application of :
Minjie Xie, et al. :
Application No.: 11/550,629 : ON PETITION
Filed: October 18, 2006 :
Attorney Docket No.: 199-0418US :

This is a decision on the petition, filed March 30, 2011, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on February 28, 2011, cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries relating to this decision should be directed to the undersigned at (571) 272-3204.

The application is being referred to Technology Center AU 2626 for further processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement (IDS).

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.*

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Townsend and Townsend and Crew, LLP /Pulmonx 017534
Two Embarcadero Center, Eighth Floor
San Francisco, CA 94111-3834

MAILED

JUN 15 2011

OFFICE OF PETITIONS

In re Application of :
Nikolai Aljuri, et. al. :
Application No. 11/550,660 :
Filed: October 18, 2006 :
Attorney Docket No. 017534-003020US :

DECISION ON PETITION
TO WITHDRAW FROM
RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 CFR §§ 1.36(b) or 10.40 filed May 10, 2011.

The request is **NOT APPROVED**.

Practitioners have not certified that they have (1) given reasonable notice to the client, prior to the expiration of the reply period, that the practitioner(s) intends to withdraw from employment; (2) delivered to the client or duly authorized representative of the client papers and property (including funds) to which the client is entitled; and (3) notified the client of any responses that may be due and the time frame within which the client must respond. The failure to do so may subject the practitioner to discipline[1]. *See USPTO Form No. PTO/SB/83.*

Petitioner should note USPTO Form Number PTO/SB/83 requires practitioner to "check each box below that is factually correct" and Warns that "If a box is left unchecked, the request will likely not be approved". (*See USPTO Form No. PTO/SB/83*).

Additionally, The Office will no longer change the correspondence address to that of a new practitioner unless the Request is accompanied by a power of attorney to a new practitioner (*See* USPTO Form PTO/SB/82). However, the Office will only accept correspondence address changes to the most current address Information provided for the assignee of the entire interest *that properly became of record under 37 CFR 3.71*[2], or, if no assignee of the entire interest has properly been made of record, the most current address information

[1] Practitioner should note that false certification may violate a practitioners' duty under 37 CFR 10.23(b)(4) and (b)(5).

[2] An assignee becomes of record either in a national patent application or a reexamination proceeding by filing a statement in compliance with § 3.73(b) that is signed by a party who is authorized to act on behalf of the assignee.

provided for the first named inventor. Therefore, the Office cannot change the correspondence address to the address on the Request to Withdraw at this present time.

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

cc: KNOBBE MARTENS OLSON & BEAR, LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

Doc Code: PET.PTA.RCAL
Document Description: Request for Recalculation in view of Wyeth

PTO/SB/131 (01-10)
Approved for use through 02/28/2011. OMB 0651-0020
U.S. Patent and Trademark Office; U. S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF *WYETH**

Attorney Docket Number: TI-61574	Patent Number: 7,668,248
Filing Date (or 371(b) or (f) Date): 10-18-2006	Issue Date: 02/23/2010
First Named Inventor: Dale E. Hocevar	
Title: HIGH-PERFORMANCE LDPC CODING FOR DIGITAL COMMUNICATIONS IN A MULTIPLE-INPUT, MULTIPLE-OUTPUT ENVIRONMENT	

PATENTEE HEREBY REQUESTS RECALCULATION OF THE PATENT TERM ADJUSTMENT (PTA) UNDER 35 USC 154(b) INDICATED ON THE ABOVE-IDENTIFIED PATENT. THE PATENTEE'S SOLE BASIS FOR REQUESTING THE RECALCULATION IS THE USPTO'S PRE-*WYETH* INTERPRETATION OF 35 U.S.C. 154(b)(2)(A).

Note: This form is only for requesting a recalculation of PTA for patents issued before March 2, 2010, if the sole basis for requesting the recalculation is the USPTO's pre-*Wyeth* interpretation of 35 U.S.C. 154(b)(2)(A). See Instruction Sheet on page 2 for more information.

Patentees are reminded that to preserve the right to review in the United States District Court for the District of Columbia of the USPTO's patent term adjustment determination, a patentee must ensure that he or she also takes the steps required under 35 U.S.C. 154(b)(3) and (b)(4) and 37 CFR 1.705 in a timely manner.

**Wyeth v. Kappos*, No. 2009-1120 (Fed. Cir., Jan. 7, 2010).

Signature / Wade J. Brady III /	Date August 12, 2010
Name (Print/Typed) Wade J. Brady III	Registration Number 32,080

Note: *Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required in accordance with 37 CFR 1.33 and 11.18. Please see 37 CFR 1.4(d) for the form of the signature. If necessary, submit multiple forms for more than one signature, see below**.

☑ *Total of 1 forms are submitted.

The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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TEXAS INSTRUMENTS INCORPORATED
P O BOX 655474, M/S 3999
DALLAS, TX 75265

Mail Date: 08/18/2010

Applicant	: Dale E. Hocevar	: DECISION ON REQUEST FOR
Patent Number	: 7668248	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/550,662	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 10/18/2006	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **747** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

UNITED STATES PATENT AND TRADEMARK OFFICE

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In re Application of
James R. Muldoon

Application No. 11550691

Filed: October 18,2006

Attorney Docket No. MULDOO-48959

:
:
:DECISION ON PETITION TO MAKE SPECIAL
:UNDER 37 CFR 1.102(c)(1)
:

This is a decision on the electronic petition under 37 CFR 1.102 (c)(1), filed 27-JAN-2011 to make the above-identified application special based on applicant's age as set forth in MPEP § 708.02, Section IV.

The petition is **GRANTED**.

A grantable petition to make an application special under 37 CFR 1.102(c)(1), MPEP § 708.02, Section IV: Applicant's Age must include a statement by applicant or a registered practitioner having evidence that applicant is at least 65 years of age. No fee is required.

Accordingly, the above-identified application has been accorded "special" status and will be taken up for action by the examiner upon the completion of all pre-examination processing.

Telephone inquiries concerning this electronic decision should be directed to the Electronic Business Center at 866-217-9197.

All other inquiries concerning either the examination or status of the application should be directed to the Technology Center.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Decision Date : October 7,2011

In re Application of :

John COX

Application No : 11550739

Filed : 18-Oct-2006

Attorney Docket No : USGINZ05200

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY/AGENTOF RECORD

This is an electronic decision on the Request to Withdraw as attorney or agent of record under 37 CFR § 1.36(b), filed October 7,2011

The request is **APPROVED.**

The request was signed by Johney U. Han (registration no. 45565) on behalf of all attorneys/agents associated with Customer Number 40518 . All attorneys/agents associated with Cusotmer Number 40518 have been withdrawn.

Since there are no remaining attorneys of record, all future communications from the Office will be directed to the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71, with correspondence address:

Name	USGI Medical, Inc.
Name2	
Address 1	1140 Calle Cordillera
Address 2	
City	San Clemente
State	CA
Postal Code	92673
Country	US

As a reminder, requester is required to inform the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71 of the electronically processed petition.

Telephone inquiries concerning this decision should be directed to the Patent Electronic Business Center (EBC) at 866-217-9197.

Office of Petitions

Doc Code: PET.AUTO **Document Description: Petition automatically granted by EFS-Web**	PTO/SB/83 U.S. Patent and Trademark Office Department of Commerce

Electronic Petition Request	**REQUEST FOR WITHDRAWAL AS ATTORNEY OR AGENT AND CHANGE OF CORRESPONDENCE ADDRESS**
Application Number	11550739
Filing Date	18-Oct-2006
First Named Inventor	John COX
Art Unit	3738
Examiner Name	CHRISTOPHER PRONE
Attorney Docket Number	USGINZ05200
Title	INSTRUMENT ASSISTED ABDOMINAL ACCESS

◉ Please withdraw me as attorney or agent for the above identified patent application and the practitioners of record associated with Customer Number: 40518

The reason(s) for this request are those described in 37 CFR:

10.40(b)(4)

Certifications

☒ I/We have given reasonable notice to the client, prior to the expiration of the response period, that the practitioner(s) intend to withdraw from employment

☒ I/We have delivered to the client or a duly authorized representative of the client all papers and property (including funds) to which the client is entitled

☒ I/We have notified the client of any responses that may be due and the time frame within which the client must respond

Change the correspondence address and direct all future correspondence to the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71:

Name	USGI Medical, Inc.
Address	1140 Calle Cordillera
City	San Clemente
State	CA
Postal Code	92673
Country	US

I am authorized to sign on behalf of myself and all withdrawing practitioners.	
Signature	/Johney U. Han/
Name	Johney U. Han
Registration Number	45565

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P.O. Box 1450
Alexandria, VA 22313-1450
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MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

MAILED

APR 12 2011

OFFICE OF PETITIONS

In re Application of :
MacInnis :
Application No. 11/550,767 : DECISION ON PETITION
Filed: October 18, 2006 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 16881US02 :

This is a decision on the petition under 37 CFR 1.78(a)(3), filed February 24, 2011, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of priority to the prior-filed nonprovisional application set forth in the concurrently filed amendment.

The petition is **DISMISSED.**

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed 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 37 CFR 1.78(a)(2)(ii) 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.

The petition does not comply with item (1)

37 CFR 1.78(a)(2)(i) requires that any nonprovisional application claiming the benefit of one or more prior-filed copending nonprovisional applications must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) and indicating the relationship of the applications. The relationship between the applications is whether the subject application is a continuation, divisional, or continuation-in-part of a prior-filed nonprovisional application. An example of a proper benefit claim is: "This application is a continuation of Application No. 10/---, filed---." A benefit claim that merely states: "This application claims the benefit of Application No. 10/---, filed---," does not comply with 37 CFR 1.72(a)(2)(i) since the proper relationship, which

includes the type of continuing application, is not stated. Also, the status of each nonprovisional parent application (if it is patented or abandoned) should also be indicated, following the filing date of the parent nonprovisional application. See, MPEP Section 201.11, Reference to Prior Nonprovisional Applications. The amendment fails to comply with the provisions of 37 CFR 1.78(a)(2)(i) and is therefore unacceptable.

Before the petition under 37 CFR § 1.78(a)(3) can be granted, a renewed petition under 37 CFR § 1.78(a)(3) an Application Data Sheet or a substitute amendment (complying with 37 CFR 1.121 and 37 CFR 1.76(b)(5)), which states the relationship of the prior-filed applications to this application, are required.

Further correspondence with respect to this matter should be addressed as follows:

By mail:
Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand:
Customer Service Window
Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax:
(571) 273-8300
ATTN: Office of Petitions

Any questions concerning this matter may be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

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MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

MAILED

JUN 16 2011

OFFICE OF PETITIONS

In re Application of :
MacInnis :
Application No. 11/550,767 : DECISION ON PETITION
Filed: October 18, 2006 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 16881US02 :

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed June 13, 2011, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of priority to the prior-filed nonprovisional application set forth in the concurrently filed amendment.

The petition is **DISMISSED.**

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed 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 37 CFR 1.78(a)(2)(ii) 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.

The petition does not comply with item (1)

37 CFR 1.78(a)(2)(i) requires that any nonprovisional application claiming the benefit of one or more prior-filed copending nonprovisional applications must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) and indicating the relationship of the applications. The relationship between the applications is whether the subject application is a continuation, divisional, or continuation-in-part of a prior-filed nonprovisional application. An example of a proper benefit claim is: "This application is a continuation of Application No. 10/---, filed---." A benefit claim that merely states: "This application claims the benefit of Application No. 10/---, filed---," does not comply with 37 CFR 1.72(a)(2)(i) since the proper relationship, which includes the type of continuing application, is not stated. Also, the status of each nonprovisional

parent application (if it is patented or abandoned) should also be indicated, following the filing date of the parent nonprovisional application. See, MPEP Section 201.11, Reference to Prior Nonprovisional Applications. The amendment fails to comply with the provisions of 37 CFR 1.78(a)(2)(i) and is therefore unacceptable.

Specific reference is drawn to the amended specification filed June 13, 2011 which asserts that U.S. App. No. 10/763,087 is a **continuation** of U.S. App. No. 10/322,059 wherein USPTO records reflect that U.S. App. No. 10/763,087 is a **division** of U.S. App. No. 10/322,059.

Before the petition under 37 CFR § 1.78(a)(3) can be granted, a renewed petition under 37 CFR § 1.78(a)(3) an Application Data Sheet or a substitute amendment (complying with 37 CFR 1.121 and 37 CFR 1.76(b)(5)), which states the relationship of the prior-filed applications to this application, are required.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Customer Service Window
Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: (571) 273-8300
ATTN: Office of Petitions

Any questions concerning this matter may be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

MAILED

AUG 30 2011

OFFICE OF PETITIONS

In re Application of :
MacInnis :
Application No. 11/550,767 : DECISION ON PETITION
Filed: October 18, 2006 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 16881US02 :

This is a decision on the petition under 37 CFR 1.78(a)(3), filed August 2, 2011, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the amendment filed with the petition.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed 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 37 CFR 1.78(a)(2)(ii) 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.

The petition does not satisfy item (1) above.

The proposed amendment to claim priority to the prior-filed applications cannot be entered because the examiner has determined that the proposed amendment raises new issues that would require further consideration and/or search. Accordingly, petitioner may wish to submit a Request for Continued Examination (RCE) if reconsideration of the petition for acceptance of the late claim for priority under 37 CFR 1.78(a)(3) is desired.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS

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Post Office Box 1450
Alexandria, VA 22313-1450

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Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: (571) 273-8300
ATTN: Office of Petitions

This application is being returned to Group Art Unit 2195.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

MAILED

SEP 19 2011

OFFICE OF PETITIONS

In re Application of :
MacInnis :
Application No. 11/550,767 : DECISION ON PETITION
Filed: October 18, 2006 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 16881US02 :

This is a decision on the petition under 37 CFR 1.78(a)(3), filed September 9, 2011, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the amendment filed with the petition.

The petition under 37 CFR 1.78(a)(3) is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000 and after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed 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 37 CFR 1.78(a)(2)(ii) 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.

All of the above requirements having been satisfied, the late claim for priority under 35 U.S.C. § 120 is accepted as being unintentionally delayed.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR 1.78(a)(3) should not be construed as meaning that this application is entitled to the benefit of the prior-filed applications. In order for this application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this

benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed nonprovisional applications, accompanies this decision on petition.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3205. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This application is being forwarded to Technology Center Art Unit 2195 for consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed applications.

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

Enclosure: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
11/550,767	10/18/2006	2195	1200	16881US02	20	4

CONFIRMATION NO. 9220

CORRECTED FILING RECEIPT

23446
MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO, IL 60661

Date Mailed: 09/16/2011

Receipt is acknowledged of this non-provisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections**

Applicant(s)

Alexander MacInnis, Ann Arbor, MI;

Power of Attorney: The patent practitioners associated with Customer Number 23446

Domestic Priority data as claimed by applicant

This appln claims benefit of 60/728,094 10/18/2005
and is a CIP of 10/763,087 01/22/2004
which is a DIV of 10/322,059 12/17/2002 PAT 6,721,837
which is a CON of 09/712,736 11/14/2000 PAT 6,529,935
which is a CON of 09/437,209 11/09/1999 PAT 6,189,064
which claims benefit of 60/107,875 11/09/1998

Foreign Applications (You may be eligible to benefit from the **Patent Prosecution Highway** program at the USPTO. Please see http://www.uspto.gov for more information.)

If Required, Foreign Filing License Granted: 01/04/2007

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/550,767**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

REAL TIME SCHEDULING SYSTEM FOR OPERATING SYSTEM

Preliminary Class

718

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at http://www.uspto.gov/web/offices/pac/doc/general/index.html.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, http://www.stopfakes.gov. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as

set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

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QUALCOMM INCORPORATED
5775 MOREHOUSE DR
SAN DIEGO CA 92121

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FEB 10 2012

OFFICE OF PETITIONS

In re Application of :
Rose, et al. :
Application No. 11/550,779 : ON PETITION
Filed: October 18, 2006 :
Attorney Docket No. 030406 :

This is a decision on the petition to revive under 37 CFR 1.137(b), filed January 12, 2012.

The petition under 37 CFR 1.137(b) is **GRANTED**.

The above application became abandoned for failure to timely file a reply to the non-final Office action mailed June 6, 2011. This Office set a shortened statutory period for reply of three months. No reply having been received, the application became abandoned on September 7, 2011. The Office mailed a Notice of Abandonment on December 21, 2011.

With the instant petition, petitioner has made the proper statement of unintentional delay, paid the petition fee, and submitted the required reply in the form of an Amendment.

The application is being forwarded to Group Art Unit 2438 for consideration of the Amendment, filed January 12, 2012.

Telephone inquiries related to this decision should be directed to the undersigned at (571)272-3207.

Cliff Congo
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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J. B. Kraft
710 Colorado Street #5C
Austin TX 78701

MAILED

DEC 28 2010

OFFICE OF PETITIONS

In re Application of :
Michael Negley Abernethy, Jr. :
Application No. 11/550,832 : DECISION ON PETITION
Filed: October 19, 2006 :
Attorney Docket No. AUS920060679US1 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 19, 2010, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before September 27, 2010, as required by the Notice of Allowance and Fee(s) Due, mailed June 25, 2010. Accordingly, the date of abandonment of this application is September 28, 2010. A Notice of Abandonment was mailed on October 8, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1,510 and the publication fee of $300, (2) the petition fee of $1,620, and (3) a proper statement of unintentional delay. Accordingly, the issue and publication fees are accepted as being unintentionally delayed.

Telephone inquiries concerning this decision should be directed to Kimberly Inabinet at (571) 272-4618.

This application is being referred to the Office of Data Management for further processing into a patent.

/Kimberly A. Inabinet/

Kimberly A. Inabinet
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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YI-CHEN CHIU
4F-8, NO. 123, SEC. 3,
TAICHUNG PORT RD
TAICHUNG 407 TW TAIWAN

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NOV 08 2010
OFFICE OF PETITIONS

In re Application of

Yang, et al.

Application No. 11/550,889

Filed: October 19, 2006

Attorney Docket No. CFP00567

DECISION ON PETITION

This is a decision on the petition under 37 CFR §1.137(b), filed October 26, 2010, to revive the above-identified application.

The petition is **granted**.

This application became abandoned for failure to timely remit the issue fee of $755.00 and publication fee of $300.00 as required by the Notice of Allowance and Issue Fee Due (the "Notice") mailed June 9, 2010. The Notice set forth a three (3) month statutory period for reply. No response was received within the allowable period. Accordingly, this application became abandoned on September 10, 2010. A Notice of Abandonment was mailed on October 25, 2 010.

The issue fee and publication fee were received on September 13, 2010.

Form PTOL-85B, filed September 10, 2010, is noted and made of record.

The application is being directed to the Office of Data Management for further processing.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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FLORHAM PARK NY 07932

MAILED
JUL 06 2011
OFFICE OF PETITIONS

In re Application of	:	
FULLER, et al	:	
Application No. 11/550,952	:	DECISION ON PETITION
Filed: October 19, 2006	:	
Attorney Docket No. DEP5595USNP	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed June 6, 2011, to revive the above-identified application.

The petition is GRANTED.

The application became abandoned for failure to timely pay the issue and publication fees on or before May 16, 2011, as required by the Notice of Allowance and Fee(s) Due (Notice), mailed February 14, 2011, which set a statutory period for reply of three (3) months. Accordingly, the application became abandoned on May 17, 2011. A Notice of Abandonment was mailed June 2, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1510 and the publication fee of $300; (2) the petition fee of $1620; and (3) a statement of unintentional delay.

The application file does not indicate a change of address has been filed in this case, although the address given on the petition differs from the address of record. A change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

The application is being referred to the Office of Data Management for processing into a patent.

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

cc: STUART D. FRENKEL
FRENKEL & ASSOCIATES, PC
3975 UNIVERSITY DRIVE, STE. 330
FAIRFAX, VA 22030

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PHILIP S. JOHNSON
JOHNSON & JOHNSON
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK, NJ 08933-7003

MAILED

AUG 24 2010

OFFICE OF PETITIONS

In re Application of Chehab et al. :
Application No. 11/550,965 : On Application For
Filing Date: October 19, 2006 : Patent Term Adjustment
Attorney Docket No. VTN5110 :

This is in response to the application for patent term adjustment filed January 15, 2010. Applicants submit the correct patent term adjustment to be indicated on the patent is at least 562 days, not 471 days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request this correction solely on the basis that the Office will take in excess of three years to issue this patent.

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See 37 CFR 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, an applicant may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the

amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee.[1]

The $200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b) has been charged to Deposit Account No. 10-0750 as authorized in the petition.

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

[1] For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

UNITED STATES PATENT AND TRADEMARK OFFICE

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ALLAN CHAN
ALLAN CHAN & ASSOCIATES
225 BROADWAY, SUITE 700
NEW YORK NY 10007

MAILED

OCT 11 2011

OFFICE OF PETITIONS

In re Application of
Uzo
Application No. 11/551,005
Filed: October 19, 2006
Atty. Dkt. No.: 24065-053

: DECISION ON PETITION

This decision is in response to the petition under 37 CFR 1.137(b), filed October 3, 2011.

The petition is **GRANTED**.

The application became abandoned April 25, 2011 for failure to timely submit a proper reply to the final Office action mailed January 24, 2011. The final Office action set a three month shortened statutory period of time for reply. Notice of Abandonment was mailed August 8, 2011.

A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by: (1) the required reply to the outstanding Office action or notice, unless previously filed; (2) the petition fee as set forth in 37 C.F.R. § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee set forth in 37 C.F.R. § 1.20(d)) required pursuant to 37 C.F.R. § 1.137(c).

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE), including fee and submission required by 37 CFR 1.114; (2) the required petition fee; and (3) a proper statement of unintentional delay.

This application is being referred to Technology Center AU 3621 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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Paper No.

ZYMOGENETICS, INC.
INTELLECTUAL PROPERTY
DEPARTMENT
1201 EASTLAKE AVENUE EAST
SEATTLE WA 98102-3702

MAILED

SEP 30 2010

OFFICE OF PETITIONS

In re Application of :
Novak et al. :
Application No. 11/551,127 : ON APPLICATION FOR
Filed: October 19, 2006 : PATENT TERM ADJUSTMENT
Atty Docket No. 99-16D5 :

This is in response to the APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b) filed May 7, 2010. Applicant submits that the correct patent term adjustment to be indicated on the patent is six hundred twenty-five (625) days, not three hundred eighty-six (386) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicant requests this correction on the basis that the Office will take in excess of three years to issue this patent.

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As

such, the Office cannot make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee[1].

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months

---

[1] For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

STERNE KESSLER GOLDSTEIN & FOX P.L.L.C.
1100 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005

MAILED

JUL 05 2011

OFFICE OF PETITIONS

In re Application of :
James J. Fallon et al :
Application No. 11/551,204 : ON PETITION
Filed: October 19, 2006 :
Attorney Docket No. 2855.0040009

This is a decision on the petition, filed July 1, 2011 under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on May 5, 2011 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to Irvin Dingle at (571) 272-3210.

This matter is being referred to Technology Center AU 2115 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

/Irvin Dingle/
Irvin Dingle
Petitions Examiner
Office of Petitions

[1] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above. Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
Alexandria, VA 22313-1450
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STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.
1100 NEW YORK AVENUE, N.W.
WASHINGTON DC 20005

MAILED

JUL 18 2011

OFFICE OF PETITIONS

In re Application of	:	
James J. Fallon et al	:	
Application No. 11/551,211	:	DECISION GRANTING PETITION
Filed: October 19, 2006	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 2855.0040008	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed July 14, 2011, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). *See* 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on July 14, 2011 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (571) 272-3208.

This application is being referred to Technology Center AU 2115 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed IDS.

/Karen Creasy/
Karen Creasy
Petitions Examiner
Office of Petitions

[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.*

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Hamilton & Terrile, LLP- RIM
P.O. Box 203518
Austin TX 78720

MAILED

JAN 06 2011

OFFICE OF PETITIONS

In re Patent No. 7,369,092 :
Issue Date: May 6, 2008 :
Application No. 11/551,284 : DECISION ON PETITION
Filed: October 20, 2006 :
Attorney Docket No. 31351-US-PAT (85077) :

This is a decision on the petition, filed October 15, 2010, which is being treated as a petition under 37 CFR 1.182 to assign a reissue application to a new file and a new application number.

The petition is **GRANTED**.

The petition indicates that reissue application papers were erroneously filed in the above identified application on May 6, 2010, instead of being filed as a new reissue application. The petition requests that these papers be effectively pulled from this application and be used to form a new application file.

The Office of Patent Application Processing will create a new Reissue Application with the papers erroneously filed in the above identified application and will be assigned a new application number.

Any questions concerning this decision can be directed to the undersigned at (571) 272-6842. Any questions concerning the creation of the new reissue application can be directed to Kevin Little at (703) 756-1451.

Carl Friedman
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/551,345	10/20/2006	Gunnar Klinghult	PS06 0622US2	1166

58561 7590 03/11/2011

HARRITY & HARRITY, LLP
11350 RANDOM HILLS ROAD
SUITE 600
FAIRFAX, VA 22030

EXAMINER	
PASCHALL, MARK H	

ART UNIT	PAPER NUMBER
3742	

MAIL DATE	DELIVERY MODE
03/11/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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HARRITY & HARRITY, LLP
11350 RANDOM HILLS ROAD
SUITE 600
FAIRFAX VA 22030

In re Application of:
KLINGHULT, GUNNAR
Serial No.: 11/551,345
Filed: Oct. 20, 2006
Docket: PS06 0622US2
Title: INOUT SENSITIVE USER INTERFACE

DECISION ON PETITION TO REVIEW RESTRICTION REQUIREMENT UNDER 37 CFR 1.144

This is a decision on the petition filed January 13, 2011 to review the restriction requirement promulgated on June 10, 2010. The petition is being considered pursuant to 37 CFR 1.181 and CFR 1.144 and no fee is required for the petition.

The petition is dismissed as moot.

In his January 13, 2011 petition, petitioner requests the examiner to withdraw the restriction requirement issued on June 10, 2010 regarding claims 16-21 directed to method of heating a communication device and claims 22-25 drawn to a lock device, per se under MPEP § 806.05(e) because the applicant believes that the restriction requirement do not meet the criteria for a proper restriction under the guidelines set forth in MPEP Chapter 800. In particular, petitioner argues that the examiner failed to provide any reasonable examples regarding the distinctness of Groups I and III; II and III inventions.

On January 13, 2011, the applicant has filed a Rule 111 amendment to the elected claims 1-4 and 6-15. The applicant also cancelled claim 5. In view of the substantive amendment to all of the elected claims which changes the scope of the elected invention as claimed, the original restriction requirement of June 10, 2010 is no longer applicable. The propriety of the restriction requirement cannot be decided. The requested relief can not be granted. However, in order to clarify the status of the restriction requirement in view of the Rule 111 amendment, the examiner is directed in the next Office action to provide a complete restriction requirement based on the current amended claims 1-4 and 6-15 and non-elected claims 16-25 in accordance with the

MPEP Chapter 800 practices and procedures or totally withdraw the restriction requirement of June 10, 2010 and rejoin the non-elected claims 16-25.

After consulting with the examiner, it was agreed that the original restriction requirement of June 10, 2010 should be withdrawn in view of the Rule 111 amendment of January 13, 2011. An Office action clarifying and/or modifying the restriction requirement will follow in due course.

The application is being forwarded to the examiner via the Supervisory Patent Examiner for preparation of an Office action in response to the applicant's arguments regarding the alleged improper restriction of June 10, 2010. Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision, 37 CFR 1.181(f). The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181". The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. No extension of time under 37 CFR 1.136(a) is permitted.

Any inquiry regarding this decision should be directed to Henry C. Yuen, Special Programs Examiner, at (571) 272-4856.

PETITION DISMISSED as MOOT

Angela D. Hughes f.s.

Karen M. Young, Director
Technology Center 3700

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BROOKS KUSHMAN P.C.
1000 TOWN CENTER
TWENTY-SECOND FLOOR
SOUTHFIELD MI 48075

MAILED
JUN 29 2011
OFFICE OF PETITIONS

In re Patent No. 7,762,633 :
Issue Date: July 27, 2010 :
Application No. 11/551,442 : ON PETITION
Filed: October 20, 2006 :
Attorney Docket No. **ROVR 0101 PUSA** :

This is a decision on the petition filed December 2, 2010, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **GRANTED**.

Petitioner states that the correct assignee's name is "Land Rover" and that the incorrect assignee's name was included on the Fee(s) Transmittal form PTOL-85(b) at the time of payment of the issue fee. Accordingly, petitioner requests that a certificate of correction be issued to reflect the correct assignee on the front page of the Letters Patent in the patent to be issued from the application.

Telephone inquiries concerning this decision may be directed to the JoAnne Burke at (571) 272-4584. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

As authorized, the $130 fee for the petition under 37 CFR 3.81(b) and $100 fee for Request for Certificate of Correction has been assessed to petitioner's deposit account.

The Certificates of Correction Branch will be notified of this decision granting the petition under 37 CFR 3.81(b) and directing issuance of the requested Certificate of Correction.

JoAnne Burke
Petitions Examiner
Office of Petitions

[1] *See* MPEP 1309, subsection II; and Official Gazette of June 22, 2004.

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AUG 30 2010

OFFICE OF PETITIONS

HARRITY & HARRITY, LLP
11350 RANDOM HILLS RD.
SUITE 600
FAIRFAX VA 22030

In re Application of :
Angela T. Hui et al :
Application No. 11/551,532 : DECISION ON PETITION
Filed: October 20, 2006 :
Attorney Docket No. AF01608 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 18, 2009, to revive the above-identified application.

The petition is **GRANTED**.

The two-month period for filing an appeal brief under 37 CFR 41.37 (accompanied by the fee required by 37 CFR 41.20(b)(2)), runs from the date of this decision.

This application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of November 25, 2008. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Notice of Appeal; (2) the petition fee of $1,620.00; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.

This application is being referred to Technology Center AU 2811 to await the filing of an appeal brief or for such other appropriate reply as may be submitted to continue prosecution of the application.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

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DUANE MORRIS LLP - Chicago
IP DEPARTMENT
190 South LaSalle Street
Suite 3700
CHICAGO IL 60603-3433

MAILED

APR 06 2011

OFFICE OF PETITIONS

In re Application of :

GATELEY, Stephen et al. :
Application No. 11/551,579 : DECISION ON PETITION
Filed: October 20, 2006 : TO WITHDRAW
Attorney Docket No. E8655-00014 : FROM RECORD
:

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed March 16, 2011.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. The Office requires the practitioner(s) requesting withdrawal to certify that he, she, or they have: (1) given reasonable notice to the client, prior to the expiration of the response period, that the practitioner(s) intends to withdraw from employment; (2) delivered to the client or a duly authorized representative of the client all papers and property (including funds) to which the client is entitled; and (3) notified the client of any responses that may be due and the time frame within which the client must respond, pursuant 37 CFR 10.40(c).

The request was signed by Robert Gould on behalf of all attorneys of record who are associated with customer No. 76223. All attorneys/agents associated with the Customer Number 76223 have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

All future correspondence will be directed to the first named inventor Stephen Gately at the address indicated below.

Telephone inquiries concerning this decision should be directed to Tredelle Jackson at 571-272-2783.

/Tredelle D. Jackson/
Paralegal Specialist
Office of Petitions

cc: **STEPHEN GATELY**
9977 NORTH 90TH STREET, SUITE 110
SCOTTSDALE AZ 85258

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 09/25/11

TO SPE OF : ART UNIT 3693

SUBJECT : Request for Certificate of Correction for Appl. No.: 11551690 Patent No.: 7970683

CofC mailroom date: 09/19/11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580
You can fax the Directors/SPE response to 571-273-3421

Note: Should the changes to claim 1 be approved?

Lamonte Newsome

Certificates of Correction Branch

571-272-3421

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

X Approved	**All** changes apply.
❑ **Approved in Part**	Specify below which changes **do not** apply.
❑ **Denied**	State the reasons for denial below.

Comments:

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

/James Kramer/ 3693

SPE Art Unit

OPAP IAP1 SEP 19 2011 PATENT & TRADEMARK OFFICE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of:	)
Edward P. LAZEAR et al..	)
Patent No.: US 7,970,683	)
Application No.: 11/551,690	)
Issued: June 28, 2011	)

Certificate
SEP 21 2011
of Correction

For: SYSTEM AND METHOD FOR MULTI-STATE TAX ANALYSIS

TRANSMITTAL LETTER

Commissioner for Patents
Office of Data Management
Attention: Certificates of Correction Branch
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Enclosed is the following document pertaining to patent no. US 7,970,683:

1. Certificate of Correction Form PTO/SB/44

On February 14, 2011, during a telephonic conference between Applicant's undersigned representative and Examiner Kevin Poe, Examiner Poe indicated allowance of all claims 1-36 with a proposed amendment to claim 35 to insert "tangible" before "machine-readable medium" in that claim's preamble. Applicant agreed to this proposed amendment. Subsequently, on February 17, 2011, the Office mailed Applicant a Notice of Allowance allowing claims 1-36 in the above referenced application. However, instead of amending claim 35, the Examiner included an Examiner's amendment amending claim "1" with the addition of the word "tangible" prior to "machine-readable medium." The Examiner mistakenly included claim "1" while correctly reciting the amended language "machine-readable medium" of claim 35, including the agreed to Examiner's amendment to insert "tangible" in the claim 35. Applicant respectfully

asserts that it is apparent from Applicant's response on December 6, 2010, which included the amended claims that were subsequently allowed by the Examiner, that the referenced claim in the Examiner's amendment was unintentionally labled as claim 1. The claim amended in the Examiner's amendment should have been claim 35 and not claim 1. Per multiple telephone correspondence between Examiner Poe and the undersigned, Kevin Duncan, including the original telephone interview on February 14, 2011 as well as recent phone conferences, Applicant and Examiner agree that the Examiner intended to amend claim 35 and not claim 1. The Certificate of Correction form reflects this change. As such, Applicant corrects claim 1 to reflect the intended language accepted by the Examiner on February 17, 2011 per Applicant's amendment and response on December 6, 2011. Further, Applicant corrects claim 35 to include the word "tangible" prior to "machine-readable medium" as intended by the examiner's amendment dated February 17, 2011.

Our understanding, as acknowledged by the Examiner, is that this is an Office mistake and therefore, no fees are required. To the extent any fees are found to be required, the undersigned authorizes the PTO to charge such fees, or to deposit refunds or any overpayments, to PTO Deposit Account No. 50-4682.

Please do not hestitate to contact us if you require any additional information.

Sincerely,

Kevin T. Duncan
Registration No. 41,495
One Riverfront Plaza
401 West Main Street, Ste. 1950
Louisville, Kentucky 40202
Tel: 502-568-2100
Fax: 502-568-2101

Date: September 16, 2011

PTO/SB/44 (09-07)
Approved for use through 08/31/2013. OMB 0651-0033
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.
(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : US 7,970,683

APPLICATION NO.: 11/551,690 OK TO ENTER: /J.K./

ISSUE DATE : June 28, 2011

INVENTOR(S) : Edward P. Lazear and Alexandre Ziegler

It is certified that an error appears or errors appear in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

Column 18, line 2, cancel the text beginning with "1. A tangible machine-readable medium" to and ending "with one another" in column 18, line 13, and insert the following claim:

1. A method, comprising:
loading tax-relevant data into a memory accessible by a processor;
creating by the processor one or more alternate entity structures based on the tax-relevant data and a base entity structure, the base entity structure comprising one or more entities;
determining by the processor a tax liability for each alternate entity structure and the base entity structure; and
generating on a display a result based on comparing each of the determined tax liabilities.

Column 20, line 37, insert "tangible" prior to "machine-readable medium" so that the beginning of the claim reads "35. A tangible machine-readable medium".

MAILING ADDRESS OF SENDER (Please do not use customer number below):

Kevin T. Duncan, Valenti Hanley & Robinson, PLLC
One Riverfront Plaza, Suite 1950, 401 West Main Street
Louisville, KY 40202

This collection of information is required by 37 CFR 1.322, 1.323, and 1.324. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Attention Certificate of Corrections Branch, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

UNITED STATES PATENT AND TRADEMARK OFFICE

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MARSH, FISCHMANN & BREYFOGLE LLP
8055 EAST TUFTS AVENUE
SUITE 450
DENVER CO 80237

MAILED

JUN 20 2011

OFFICE OF PETITIONS

In re Application of
James R. Small et al
Application No. 11/551,804
Filed: October 23, 2006
Attorney Docket No. 50319-00097

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 9, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an amendment; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the nonfinal Office action mailed July 31, 2009, is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.

This application is being referred to Technology Center AU 3767 for appropriate action by the Examiner in the normal course of business.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Decision Date February 24, 2012

In re Application of Daniel Smith

Application No. 11551948

Filed: 23-Oct-2006

Attorney Docket No. S067 P01192-US

DECISION ON PETITION

UNDER CFR 1.137(b)

This is an electronic decision on the petition under 37 CFR 1.137(b), February 24, 2012 , to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the outstanding Office communication. The date of abandonment is the day after the last day of the period set for reply in the Office action plus any applicable extensions of time properly requested.

The electronic petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of aresponse; (2) the petition fee as set forth in 37 CFR 1.17 (m); and (3) the required statement of unintentional delay have been received. Accordingly, the response is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the Patent Electronic Business Center (EBC) at 866-217-9197.

This application file is being directed to the Technology Center.

Office of Petitions

Doc Code: PET.AUTO Document Description: Petition automatically granted by EFS-Web	PTO/SB/64 U.S. Patent and Trademark Office Department of Commerce

Electronic Petition Request	**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**
Application Number	11551948
Filing Date	23-Oct-2006
First Named Inventor	Daniel Smith
Attorney Docket Number	S067 P01192-US1
Title	CARTRIDGE ASSEMBLY FOR A SELF-CONTAINED EMERGENCY EYEWASH STATION

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus any extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:
(1) Petition fee;
(2) Reply and/or issue fee;
(3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
(4) Statement that the entire delay was unintentional

Petition Fee

- ○ Applicant claims SMALL ENTITY status. See 37 CFR 1.27.
- ○ Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).
- ○ Applicant(s) status remains as SMALL ENTITY.
- ◉ Applicant(s) status remains as other than SMALL ENTITY.

2. Reply and/or fee

- ○ I certify, in accordance with 37 CFR 1.4(d)(4) that the amendment and response have already been filed in the above-identified application on
- ◉ Amendment and response are attached

RCE request,submission, and fee.

- ○ I certify, in accordance with 37 CFR 1.4(d)(4) that the RCE Request, Submission, and Fee have already been filed in the above-identified application on
- ○ RCE Request, Submission, and Fee are attached

Notice of Appeal

○	I certify, in accordance with 37 CFR 1.4(d)(4) that the Notice of Appeal and Fee have already been filed in the above-identified application on
○	Notice of Appeal and Fee are attached

3. Terminal Disclaimer is not required, since the Electronic Petition format is not support for Design applications and applications filed before June 8, 1995. Please file using regular petition format for review by the Office of Petitions.

☒	STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional.

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

I certify, in accordance with 37 CFR 1.4(d)(4) that I am:

◉	An attorney or agent registered to practice before the Patent and Trademark Office who has been given power of attorney in this application.
○	An attorney or agent registered to practice before the Patent and Trademark Office, acting in a representative capacity.
○	A sole inventor
○	A joint inventor; I certify that I am authorized to sign this submission on behalf of all of the inventors
○	A joint inventor; all of whom are signing this e-petition
○	The assignee of record of the entire interest that has properly made itself of record pursuant to 37 CFR 3.71

Signature	/stephen holmes/
Name	Stephen Holmes
Registration Number	34621

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PATTERSON THUENTE CHRISTENSEN
PEDERSEN, P.A.
4800 IDS CENTER
80 SOUTH 8TH STREET
MINNEAPOLIS MN 55402-2100

MAILED

AUG 16 2010

OFFICE OF PETITIONS

In re Application of :
Rossing, et al. :
Application No. 11/552,005 : ON APPLICATION FOR
Filed: October 23, 2006 : PATENT TERM ADJUSTMENT
Docket No. 3511.160US02 :

This is in response to the "COMMUNICATION REGARDING PATENT TERM ADJUSTMENT," filed April 9, 2010. The correspondence is being treated as a petition under 37 CFR 1.705(b).

The required petition fee under 37 CFR 1.18(e) is being charged to deposit account no. 16-0631

The request for review of the patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the notice of allowance is **476 days**. A copy of the updated PALM screen, showing the correct determination, is enclosed.

On April 5, 2010, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment is 484 days. On April 9, 2010, applicants submitted the instant petition. Applicants disclose that they believe that the patent term adjustment indicated in the Determination of Patent Term Adjustment is incorrect and should be recalculated because the Office failed to consider the fact that an Information Disclosure Statement (IDS) was filed on March 9, 2010, after applicants filed an amendment on March 1, 2010 in response to a non-final Office action.

A review of the patent term adjustment calculations for the above-identified application reveals that the Office failed enter a reduction for an IDS filed on March 9, 2010. After applicants filed a reply on March 1, 2010 to a non-final Office action, applicants submitted a supplemental reply or paper in the form of an Information Disclosure Statement (IDS) on March 9, 2010. The record does not support a conclusion that the examiner expressly requested the filing of the IDS. Further, a review of the IDS, filed March 9, 2010, reveals that applicants did not include a statement under 37 CFR 1.704(d).[1] Thus, applicants failed to engage in reasonable efforts to conclude prosecution of the application. The period of adjustment should have been reduced by 8 days pursuant to 37 CFR 1.704(c)(8), counting the number of days beginning on the day after the date the initial reply was filed, March 2, 2010, and ending on the date that the IDS was filed, March 9, 2010. Accordingly, a period of reduction of 8 days will be entered.

In view thereof, the correct patent term adjustment at the time of mailing of the notice of allowance is **476 days** (543 days of Office delay - 67 days of applicant delay).

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicant will be notified in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

---

[1] Pursuant to 37 CFR § 1.704(d):

> A paper containing only an information disclosure statement in compliance with §§ 1.97 and 1.98 will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraphs (c)(6), (c)(8), (c)(9), or (c)(10) of this section if it is accompanied by a statement that each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement. This thirty-day period is not extendable.

Telephone inquiries specific to this decision should be directed to Shirene Willis Brantley, Senior Petitions Attorney, at (571) 272-3230.

Anthony Knight
Director
Office of Petitions

Enclosure: Copy of REVISED PALM screen

Day : Saturday
Date: 8/14/2010

PALM INTRANET

Time: 14:47:25

PTA Calculations for Application: 11/552005			
Application Filing Date:	10/23/2006	PTO Delay (PTO):	543
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	59
Post-Issue Petitions:	0	Total PTA (days):	476
PTO Delay Adjustment:	-8		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
63	08/14/2010	ADJUSTMENT OF PTA CALCULATION BY PTO		8	
52	04/05/2010	MAIL NOTICE OF ALLOWANCE			
51	03/31/2010	ISSUE REVISION COMPLETED			
50	03/31/2010	DOCUMENT VERIFICATION			
49	03/31/2010	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
48	03/31/2010	EXAMINER'S AMENDMENT COMMUNICATION			
47	03/29/2010	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
46	03/29/2010	NOTICE OF ALLOWABILITY			
45	03/26/2010	PARALEGAL TD ACCEPTED			
44	03/01/2010	TERMINAL DISCLAIMER FILED		0	38
40	03/09/2010	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
39	03/24/2010	DATE FORWARDED TO EXAMINER			
38	03/01/2010	RESPONSE AFTER NON-FINAL ACTION		59	35
37	03/01/2010	REQUEST FOR EXTENSION OF TIME - GRANTED			
36	03/09/2010	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
35	10/01/2009	MAIL NON-FINAL REJECTION			
34	09/30/2009	NON-FINAL REJECTION			
33	03/05/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
32	01/14/2009	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
31	03/27/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			

28	08/10/2009	DATE FORWARDED TO EXAMINER			
27	07/20/2009	RESPONSE TO ELECTION / RESTRICTION FILED			
26	06/30/2009	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
25	06/24/2009	CORRESPONDENCE ADDRESS CHANGE			
24	06/18/2009	MAIL RESTRICTION REQUIREMENT	543		-1
23	06/17/2009	REQUIREMENT FOR RESTRICTION / ELECTION			
22	05/05/2009	MAIL-PETITION DECISION - GRANTED			
21	05/05/2009	PETITION DECISION - GRANTED			
20	05/05/2009	CORRESPONDENCE ADDRESS CHANGE			
19	01/14/2009	REFERENCE CAPTURE ON IDS			
18	01/14/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
17	02/25/2009	CASE DOCKETED TO EXAMINER IN GAU			
16	02/12/2009	PETITION ENTERED			
15	01/14/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
14	10/17/2007	WITHDRAW FLAGGED FOR 5/25			
13	10/15/2007	FLAGGED FOR 5/25			
12	03/05/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
11	03/27/2007	REFERENCE CAPTURE ON IDS			
10.7	03/27/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
10	03/27/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
7	03/01/2007	PG-PUB ISSUE NOTIFICATION			
6	12/07/2006	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
5	11/21/2006	APPLICATION DISPATCHED FROM OIPE			
4	11/21/2006	APPLICATION IS NOW COMPLETE			
3	11/15/2006	CLEARED BY OIPE CSR			
2	11/13/2006	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	10/23/2006	INITIAL EXAM TEAM NN			

Search Another: Application# [ ] Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

To go back, right click here and select Back. To go forward, right click here and select Forward. To refresh, right click here and select Refresh.

Back to OASIS | Home page

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MINNEAPOLIS MN 55440-1022

MAILED

JUN 02 2011

OFFICE OF PETITIONS

In re Application of
Coale et al.
Application No. 11/552,050
Filed: October 23, 2006
Attorney Docket No. 19809-002001

DECISION ON PETITION
TO WITHDRAW FROM RECORD

This is a decision on the renewed Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed July 23, 2010.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. The Office will require the practitioner(s) to certify that he, she or they have: (1) given reasonable notice to the client, prior to the expiration of the reply period, which the practitioner(s) intends to withdraw from employment; (2) delivered to the client or a duly authorized representative of the client all papers and property (including funds) to which the client is entitled; and (3) notified the client of any replies that may be due and the time frame within which the client must respond, pursuant to 37 CFR 10.40 (c).

The request was signed by Terry J. Stalford on behalf of all attorneys of record.

All attorneys/agents associated with the above-identified application have been withdrawn. Applicants are reminded that there is no attorney of record at this time.

All future correspondence will be directed to the first named inventor at the address indicated below.

Currently, there is an outstanding Office action mailed March 22, 2011 that requires a reply.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

/Joan Olszewski/
Joan Olszewski
Petitions Examiner
Office of Petitions

cc: Howard S. L. Coale
143 DuPont Street, Suite 2
Philadelphia, PA 19129

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APR 13 2011

OFFICE OF PETITIONS

JEFF COLE
692 WILSON STREET
HAMILTON ON L8L1V-6 CA CANADA

In re Application of :
Jeff Cole :
Application No. 11/552,164 : ON PETITION
Filed: October 24, 2006 :
Attorney Docket No.: MOUSS.4650-NY :

This is a decision on the petition under 37 CFR 1.137(b) to revive the above-identified application, filed February 14, 2011.

The petition is **GRANTED**.

This application became abandoned for failure to submit corrected formal drawings on or before April 28, 2010 as required by the Notice of Allowability mailed January 28, 2010. A Notice of Abandonment was mailed on May 13, 2010. On February 14, 2011, the present petition was filed.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of corrected drawings, (2) the petition fee of $810; and (3) an adequate statement of unintentional delay.

The application is being referred to the Office of Data Management to oversee the review of the drawings filed February 14, 2011 and for processing into a patent.

Telephone inquires related to this decision may be directed to the undersigned at (571) 272-3204. Telephone inquiries related to processing as a patent should be directed to (571) 272-4200

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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OFFICE OF PETITIONS

WHITHAM, CURTIS & CHRISTOFFERSON & COOK, P.C.
11491 SUNSET HILLS ROAD
SUITE 340
RESTON VA 20190

In re Patent No. 7,554,423 :
Issue Date: June 30, 2009 :
Application No. 11/552,292 : NOTICE
Filed: October 24, 2006 :
Attorney Docket No. 016405770AA :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed October 15, 2010. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989).** Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby accepted. The petition is **GRANTED.**

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

This file is being forwarded to Files Repository.

Telephone inquiries related to this decision should be directed to the Kimberly Inabinet at (571) 272-4618.

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

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MEDICUS ASSOCIATES
4025 ARBOR RD
JOPLIN MO 64804

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MAR 22 2011

OFFICE OF PETITIONS

In re Application of :
LEE, Gil U. et al. :
Application No. 11/552,324 : DECISION ON PETITION
Filed: October 24, 2006 : TO WITHDRAW
Attorney Docket No. **124-002** : FROM RECORD
:

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed March 14, 2011.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. The Office requires the practitioner(s) requesting withdrawal to certify that he, she, or they have: (1) given reasonable notice to the client, prior to the expiration of the response period, that the practitioner(s) intends to withdraw from employment; (2) delivered to the client or a duly authorized representative of the client all papers and property (including funds) to which the client is entitled; and (3) notified the client of any responses that may be due and the time frame within which the client must respond, pursuant 37 CFR 10.40(c).

The request was signed by James Meadows, the sole attorney of record. James Meadows has been withdrawn as attorney or agent of record. Applicant is reminded that there is no attorney of record at this time.

The correspondence address of record has been changed and the new correspondence address is the address indicated below.

Telephone inquiries concerning this decision should be directed to Tredelle Jackson at 571-272-2783.

/Tredelle D. Jackson/
Paralegal Specialist
Office of Petitions

cc: **PURDUE RESEARCH ROUNDATION**
1281 WIN HENTSCHEL BLVD.
WEST LAFAYETT IN 47906

Doc Code: PET.PTA.RCAL
Document Description: Request for Recalculation in view of Wyeth

PTO/SB/131 (01-10)
Approved for use through 02/28/2011. OMB 0651-0020
U.S. Patent and Trademark Office; U. S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF *WYETH**

Attorney Docket Number: 5244-00007	Patent Number: 7,662,343
Filing Date (or 371(b) or (f) Date): 10/24/2006	Issue Date: 02/16/2010
First Named Inventor: Gregory Mathus	
Title: Locking Pipette Tip and Mounting Shaft	

PATENTEE HEREBY REQUESTS RECALCULATION OF THE PATENT TERM ADJUSTMENT (PTA) UNDER 35 USC 154(b) INDICATED ON THE ABOVE-IDENTIFIED PATENT. THE PATENTEE'S SOLE BASIS FOR REQUESTING THE RECALCULATION IS THE USPTO'S PRE-*WYETH* INTERPRETATION OF 35 U.S.C. 154(b)(2)(A).

Note: This form is only for requesting a recalculation of PTA for patents issued before March 2, 2010, if the sole basis for requesting the recalculation is the USPTO's pre-*Wyeth* interpretation of 35 U.S.C. 154(b)(2)(A). See Instruction Sheet on page 2 for more information.

Patentees are reminded that to preserve the right to review in the United States District Court for the District of Columbia of the USPTO's patent term adjustment determination, a patentee must ensure that he or she also takes the steps required under 35 U.S.C. 154(b)(3) and (b)(4) and 37 CFR 1.705 in a timely manner.

**Wyeth v. Kappos*, No. 2009-1120 (Fed. Cir., Jan. 7, 2010).

Signature	Date 08/10/2010
Name (Print/Typed) Edward R. Williams, Jr.	Registration Number 36,057

Note: *Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required in accordance with 37 CFR 1.33 and 11.18. Please see 37 CFR 1.4(d) for the form of the signature. If necessary, submit multiple forms for more than one signature, see below**.

☐ *Total of _____ forms are submitted.

The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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ANDRUS, SCEALES, STARKE & SAWALL, LLP
100 EAST WISCONSIN AVENUE, SUITE 1100
MILWAUKEE, WI 53202

Mail Date: 08/18/2010

Applicant	: Gregory Mathus	: DECISION ON REQUEST FOR
Patent Number	: 7662343	: RECALCULATION of PATENT
Issue Date	: 02/16/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/552,384	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 10/24/2006	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **704** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: 20111107

DATE : 11/4/11

TO SPE OF : ART UNIT: 1653

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/552,396 Patent No. 7,794,705

CofC mailroom date 10/28/11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Ernest C. White, LIE

Certificates of Correction Branch

703-756-1814

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriate box.

X **Approved**	**All** changes apply.
☐ **Approved in Part**	Specify below which changes **do not** apply.
☐ **Denied**	State the reasons for denial below.

Comments: OK to enter

/Sue Liu/ 1653

SPE **Art Unit**

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SALVATORE CARDU
STROUD VILLA
54 WINCHESTER ROAD
PETERSFIELD, HAMPSHIRE GU32 -3PG GB UNITED KINGDOM

In re Application of :
Salvatore Cardu :
Application No. 11552578 :
Filed: 10/25/2006 :
Attorney Docket No. **n/a** :

To Whom It May Concern:

The USPTO mailed a Notice to File Corrected Application Papers to your office on 09/06/2011. This notice was sent in error as the application contains a description of Figure 39. This description, received on August 29, 2011, was filed as part of the response to a previous Notice to File Corrected Application Papers. Therefore, the requirement to respond to this notice within 2 months is waived and no response is required.

Telephone inquires relating to this decision may be directed to the undersigned in the Office of Data Management at 571-272-4200.

Sincerely,

/Kimberly Terrell/
Manager
Office of Data Management
Publications Branch

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PO BOX 1022
MINNEAPOLIS MN 55440-1022

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OFFICE OF PETITIONS

In re Patent No. 7,932,435
Issued: April 26, 2011
Application No. 11/552,603
Filed: October 25, 2006
Attorney Docket No. 12557-0023002 / 58520

:DECISION ON APPLICATION
: FOR PATENT TERM ADJUSTMENT

This is a decision on the APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d) filed on June 24, 2011, requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted from 400 to 533 days.

The request for review of the patent term adjustment is **GRANTED** to the extent indicated herein.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of THREE HUNDRED FIFTY-THREE (353) days.

Patentees are given **THIRTY (30) DAYS or ONE (1) MONTH, whichever is longer,** from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

On April 26, 2011, the above-identified application matured into U.S. Patent No. 7,932,435 with a patent term adjustment of 400 days. On June 24, 2011, Patentees submitted the instant application. Patentees disclose that the patent term adjustment of 400 days indicated on the front of the patent is incorrect because Patentees filed a Petition to Withdraw on March 25, 2010, subsequent to payment of the issue fee. The PTO mailed a response to the Petition to Withdraw on March 26, 2010. Patentees were accorded 0 days delay for deferral of issuance. In good faith and candor, Patentees submit that the deferral of issuance should have been accorded a total Applicant Delay of 2 days for delay from March 25, 2010, to March 26, 2010. See 37 C.F.R. § 1.704(c)(2). Patentee also maintains that the Office incorrectly calculated Office delay pursuant to 37 CFR 1.702(b). Patentee contends that the Office erred in subtracting from the "B delay" a period of time that was not "consumed by continued examination of the application." Specifically, Patentee argues that (after the filing of the request for continued examination) the Office mailed a Notice of Allowance on December 13, 2010, thereby closing examination of the application on that date. Thus, Patentee argues no

continued examination took place during the 135 day period from December 13, 2010 (the mailing date of the Notice of Allowance) until April 26, 2011 (the date the patent was issued). As such, Patentee maintains that the "B delay" should include the 135 days and be increased from 0 to 135 days. Patentee concludes that the correct patent term adjustment is 533 days (the sum of 400 days of "A delay" and 135 days of "B delay" minus 2 days of Applicant delay).

RELEVANT STATUTE AND REGULATIONS

37 CFR 1.704(c)(2) provides that:

> (c) Circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:
>
> (2) Deferral of issuance of a patent under § 1.314, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the date a request for deferral of issuance of a patent under § 1.314 was filed and ending on the date the patent was issued;

The statutory basis for calculation of "B delay" is 35 U.S.C. 154(b)(1)(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, which provides that:

Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including —

(i) any time consumed by continued examination of the application requested by the applicant under section 132(b);

(ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or

(iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued.

The implementing regulation, 37 CFR 1.702(b) provides that:

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including:

(1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b);

(2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a);

(3) Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181;

(4) Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or

(5) Any delay in the processing of the application by the Office that was requested by the applicant.

OPINION

Applicant's arguments have been considered. While Applicant has cited 37 CFR 1.704(c)(2), a petition to withdraw from issue is covered 37 CFR 1.313, not 37 CFR 1.314. As stated in the final rule;

> Section 1.704(c)(2) establishes deferral of issuance of a patent under 1.314 as a circumstance that constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application. Obviously, if issuance of the patent is deferred under 1.314, the Office is precluded from issuing the application as a result of an action by the applicant. When a petition under 1.314 is granted, the petition decision generally states that the application will be held for a period of a month to await the filing of a paper.

As such, there is no reduction for the filing of a petition to withdraw from issue.

However, a review of the record confirms that a period of reduction should be entered for applicant's failure to engage pursuant to 37 CFR 1.704(c)(10). A Notice of Allowance was mailed on November 9, 2009. Patentees filed a Request for Continued Examination (RCE) and IDS on March 25, 2010. Prior to filing the RCE, applicant paid the Issue Fee on January 26, 2010. This set the calculation of the period of reduction pursuant to 37 CFR 1.704(b), if any, for applicant delay. The filing of the RCE and IDS on March 25, 2010, after the mailing of the Notice of Allowance constituted a failure to engage pursuant to 37 CFR 1.704(c)(10). This period is 47 days, counting the number of days in the period beginning on March 25, 2010 and ending on May 11, 2010, the date of mailing of the Notice of Allowance in response. Accordingly, a period of reduction of 47 days is being entered.

As it relates to the calculation of "B delay, patentee's arguments have been considered, but not found persuasive. The Office calculated the period of "B delay" pursuant to 35 U.S.C. 154(b)(1)(B)(i) and 37 CFR 1.702(b)(1) as 0 days based on the application having been filed under 35 U.S.C. 111(a) on October 25, 2006 and the patent not having issued as of the day after the three year date, October 25, 2009, and requests for continued examination under 132(b) having been filed on September 1, 2009, March 25, 2010, August 10, 2010 and November 22, 2010. In other words, the 135-day period beginning on the date of mailing of the notice of allowance to the date of issuance of the patent was considered time consumed by continued examination of an application under 35 U.S.C. 132(b) and was not included in the "B delay."

The Office's calculation of "B delay" is correct. The "B delay" is an adjustment entered if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed. However, the adjustment does not include, among other things, any time consumed by continued examination of the application at the request of the applicant under 35 U.S.C. 132(b)[1]. So, with respect to calculating the "B delay" where applicant has filed a request for continued examination, the period of adjustment is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the number of days in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

Further, counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentee does not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the

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[1] Pursuant to 35 U.S.C. 132(b) , 37 CFR 1.114 provides for continued examination of an application, as follows:

(a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:

(1) Payment of the issue fee, unless a petition under § 1.313 is granted;

(2) Abandonment of the application; or

(3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

(b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

request for continued examination is not any time consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56366, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

Patentee's argument that the period of time after the issuance of a notice of allowance on a request for continued examination is not "any time consumed by continued examination requested by the applicant under section 132(b)" within the meaning of 35 U.S.C. 154(b)(1)(B)(i) is not availing. This limitation is not supported by the statutory language. Garcia v. United States, 469 U.S. 70, 75 (1984) ("only the most extraordinary showing of contrary intentions from [legislative history] would justify a limitation on the 'plain meaning' of the statutory language"). BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning"). The statute provides for a guarantee of no more than 3-year application pendency, by providing for an adjustment in the patent term:

First, "Subject to the limitations of paragraph (2)," means that the limitations of paragraph 2 apply to this paragraph's adjustment of patent term. That is, the day-to-day extension of patent term for pendency beyond the 3 year period is restricted as follows: 1) "B delay" cannot accrue for days of "A delay" that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

Second, "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of the United States) after the application filing date before an adjustment will accrue for "B delay."

Third, "not including- (i) any time consumed by continued examination of the application requested by the applicant under section 132(b); (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent

Appeals and Interferences or by a Federal court; or (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), meaning that the three-year period does not include "any time consumed by" or "any delay in processing," as specified in clauses (i)-(iii). This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, 580 F.Supp.2d 138, 88 U.S.P.Q.2d 1538 (D.D.C., September 30, 2008), because the clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate this effect, the statute, *inter alia*, grants adjustments of patent term whenever the patent prosecution takes more than three years, regardless of the reason. The time consumed by prosecution of the application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. The time it takes to prosecute the application ends not with the mailing of the notice of allowance, but with the issuance of the patent.

Thus, not including "any time consumed by" means not including any days used to prosecute the application as specified in clauses (i)-(ii)[2]. Clause (i) specifies "any time consumed by continued examination of the application requested by the applicant under section 132(b)." Clause (ii) specifies "any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court." "Time" in the context of this legislation throughout refers to days. "Consumed by" means used by or used in the course of. *Websters Collegiate Dictionary*, (11th ed.). The "any" signifies that the days consumed by are "any" of the days in the pendency of the application, and not just days that occur after the application has been pending for 3 years. As such, "any time consumed by" refers to any days used in the course of 1) continued examination of the application under section 132(b)(the filing of a request for continued examination), 2)

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[2] Clause (iii) provides for not including (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued. It is noted that paragraph (3)(C) allows with an adequate showing by applicant for reinstatement of no more than 3 months of the patent term reduced for applicant delay in taking in excess of three months to respond.

interference proceedings, 3) secrecy orders, and 4) appellate review. Thus, that 3-year period given to the Office to issue a patent before an adjustment will accrue for "B delay" does not include any days used in the course of or any time consumed by clauses (i)-(ii), including any time consumed by the filing of a request for continued examination.

Fourth, "the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued" meaning that the consequence of this failure is that after "the end of that 3-year period" an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the law. See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not

entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in Blacklight Power, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. See BlackLight Power, Inc. v. Rogan, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously been issued for the application. See In re Drawbaugh, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures[3] permit the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See 37 CFR 1.114(a)(1).

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the notice of allowance. All the time the application is pending from the date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that request. Applicant has gotten further prosecution of the application without having to file a continuing application under 37 CFR 1.53(b).

All of the continued examination pursuant to the filing of the request by the applicant is properly excluded from the delay attributed to the Office. 35 U.S.C. 154(b)(1)(B)'s guarantee of a total application pendency of no more than three years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but does not include "any time consumed by continued

[3] Thus, on occasion, even where a request for continued examination has already been filed and a notice of allowance issued pursuant to that request, applicant may file a further request for continued examination.

examination requested by the applicant under 35 U.S.C. 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

In this instance, requests for continued examination were filed on September 1, 2009, March 25, 2010, August 10, 2010 and November 22, 2010 and the patent issued by virtue of those requests on April 26, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on September 1, 2009 and ending on April 26, 2011 is not included in calculating Office delay.

CONCLUSION

In view of the above, the patent should have issued with a patent term adjustment of three hundred fifty-three (353) days.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **three hundred fifty-three (353)** days.

Telephone inquiries specific to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,932,435 B2

DATED : April 26, 2011

INVENTOR(S) : Michelle L. Verbsky

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (400) days

Delete the phrase "by 400 days" and insert – by 353 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MAILED

AUG 25 2011

OFFICE OF PETITIONS

FISH & RICHARDSON P.C.
PO BOX 1022
MINNEAPOLIS MN 55440-1022

In re Patent No. 7,932,435
Issued: April 26, 2011
Application No. 11/552,603
Filed: October 25, 2006
Attorney Docket No. 12557-0023002 / 58520

: DECISION ON REQUEST FOR
: RECONSIDERATION OF
: PATENT TERM ADJUSTMENT

This is a decision on the request for reconsideration filed August 11, 2011, pursuant to 37 CFR §1.705(d), requesting that the patent term adjustment indicated on the above-identified patent be corrected from 353 days to 488 days.

This petition is hereby **DENIED**. This decision is a final agency action within the meaning of 5 U.S.C. § 704 for purposes of seeking judicial review. *See,* MPEP 1002.02.

The patent term adjustment indicated in the previous decision mailed July 11, 2011 is properly indicated.

Patentee maintains that the Office incorrectly calculated Office delay pursuant to 37 CFR 1.702(b). Patentee contends that the Office erred in subtracting from the "B delay" a period of time that was not "consumed by continued examination of the application." Specifically, Patentee argues that (after the filing of the request for continued examination) the Office mailed a Notice of Allowance on December 13, 2010, thereby closing examination of the application on that date. Thus, Patentee argues no continued examination took place during the 135 day period from December 13, 2010 (the mailing date of the Notice of Allowance) until April 26, 2011 (the date the patent was issued). As such, Patentee maintains that the "B delay" should include the 135 days and be increased from 0 to 135 days.

RELEVANT STATUTE AND REGULATIONS

The statutory basis for calculation of "B delay" is 35 U.S.C. 154(b)(1)(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, which provides that:

Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including —

(i) any time consumed by continued examination of the application requested by the applicant under section 132(b);

(ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or

(iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued.

The implementing regulation, 37 CFR 1.702(b) provides that:

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including:

(1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b);

(2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a);

(3) Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181;

(4) Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or

(5) Any delay in the processing of the application by the Office that was requested by the applicant.

OPINION

Applicant's arguments have been considered.

The Office calculated the period of "B delay" pursuant to 35 U.S.C. 154(b)(1)(B)(i) and 37 CFR 1.702(b)(1) as 0 days based on the application having been filed under 35 U.S.C. 111(a) on October 25, 2006 and the patent not having issued as of the day after the three year date, October 25, 2009, and requests for continued examination under 132(b) having been filed on September 1, 2009, March 25, 2010, August 10, 2010 and November 22, 2010. In other words, the 135-day period beginning on the date of mailing of the notice of allowance to the date of issuance of the patent was considered time consumed by continued examination of an application under 35 U.S.C. 132(b) and was not included in the "B delay."

The Office's calculation of "B delay" is correct. The "B delay" is an adjustment entered if the issuance of the patent was delayed due to the failure of the Office to issue a

patent within three years after the date on which the application was filed. However, the adjustment does not include, among other things, any time consumed by continued examination of the application at the request of the applicant under 35 U.S.C. 132(b)[1]. So, with respect to calculating the "B delay" where applicant has filed a request for continued examination, the period of adjustment is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the number of days in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

Further, counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentee does not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is not any time consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56366, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

Patentee's argument that the period of time after the issuance of a notice of allowance on a request for continued examination is not "any time consumed by continued

[1] Pursuant to 35 U.S.C. 132(b) , 37 CFR 1.114 provides for continued examination of an application, as follows:

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(2) Abandonment of the application; or

(3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

(b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

examination requested by the applicant under section 132(b)" within the meaning of 35 U.S.C. 154(b)(1)(B)(i) is not availing. This limitation is not supported by the statutory language. Garcia v. United States, 469 U.S. 70, 75 (1984) ("only the most extraordinary showing of contrary intentions from [legislative history] would justify a limitation on the 'plain meaning' of the statutory language"). BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning"). The statute provides for a guarantee of no more than 3-year application pendency, by providing for an adjustment in the patent term:

First, "Subject to the limitations of paragraph (2)," means that the limitations of paragraph 2 apply to this paragraph's adjustment of patent term. That is, the day-to-day extension of patent term for pendency beyond the 3 year period is restricted as follows: 1) "B delay" cannot accrue for days of "A delay" that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

Second, "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of the United States) after the application filing date before an adjustment will accrue for "B delay."

Third, "not including- (i) any time consumed by continued examination of the application requested by the applicant under section 132(b); (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), meaning that the three-year period does not include "any time consumed by" or "any delay in processing," as specified in clauses (i)-(iii). This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, 580 F.Supp.2d 138, 88 U.S.P.Q.2d 1538 (D.D.C., September 30, 2008),

because the clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate this effect, the statute, *inter alia*, grants adjustments of patent term whenever the patent prosecution takes more than three years, regardless of the reason. The time consumed by prosecution of the application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. The time it takes to prosecute the application ends not with the mailing of the notice of allowance, but with the issuance of the patent.

Thus, not including "any time consumed by" means not including any days used to prosecute the application as specified in clauses (i)-(ii)[2]. Clause (i) specifies "any time consumed by continued examination of the application requested by the applicant under section 132(b)." Clause (ii) specifies "any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court." "Time" in the context of this legislation throughout refers to days. "Consumed by" means used by or used in the course of. *Websters Collegiate Dictionary*, (11th ed.). The "any" signifies that the days consumed by are "any" of the days in the pendency of the application, and not just days that occur after the application has been pending for 3 years. As such, "any time consumed by" refers to any days used in the course of 1) continued examination of the application under section 132(b)(the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, and 4) appellate review. Thus, that 3-year period given to the Office to issue a patent before an adjustment will accrue for "B delay" does not include any days used in the course of or any time consumed by clauses (i)-(ii), including any time consumed by the filing of a request for continued examination.

Fourth, "the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued" meaning that the consequence of this failure is that after "the end of that 3-year period" an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.

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[2] Clause (iii) provides for not including (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued. It is noted that paragraph (3)(C) allows with an adequate showing by applicant for reinstatement of no more than 3 months of the patent term reduced for applicant delay in taking in excess of three months to respond.

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the law. See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in Blacklight Power, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. See BlackLight Power, Inc. v. Rogan, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is

the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously been issued for the application. See In re Drawbaugh, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures[3] permit the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See 37 CFR 1.114(a)(1).

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the notice of allowance. All the time the application is pending from the date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that request. Applicant has gotten further prosecution of the application without having to file a continuing application under 37 CFR 1.53(b).

All of the continued examination pursuant to the filing of the request by the applicant is properly excluded from the delay attributed to the Office. 35 U.S.C. 154(b)(1)(B)'s guarantee of a total application pendency of no more than three years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

In this instance, requests for continued examination were filed on September 1, 2009, March 25, 2010, August 10, 2010 and November 22, 2010 and the patent issued by virtue of those requests on April 26, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on September 1, 2009 and ending on April 26, 2011 is not included in calculating Office delay.

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[3] Thus, on occasion, even where a request for continued examination has already been filed and a notice of allowance issued pursuant to that request, applicant may file a further request for continued examination.

CONCLUSION

Accordingly, the decision on application for patent term adjustment has been reconsidered and the request for additional patent term is DENIED.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212.

Anthony Knight
Director
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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In re Patent No. 7,939,713 :
Verbsky et al. : DECISION ON REQUEST FOR
Issue Date: May 10, 2011 : RECONSIDERATION OF
Application No. 11/552,681 : PATENT TERM ADJUSTMENT
Filed: October 25, 2006 : AND NOTICE OF INTENT TO
Attorney Docket No. 12557-0016002 : ISSUE CERTIFICATE OF
Title: A METHOD FOR SCREENING TRANSGENIC PLANTS FOR ANTHELMINTIC ACTIVITY : CORRECTION

This is a decision on the petition filed on July 11, 2011, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by two hundred nine (209) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein**. The term of the above-identified patent is extended or adjusted by **seventy-six (76) days**.

BACKGROUND

On May 10, 2011, the above-identified application matured into U.S. Patent No. 7,939,713, with a revised patent term adjustment of 105 days. On July 11, 2011, patentee timely submitted this request for reconsideration of patent term adjustment (with required fee), asserting that the correct number of days of Patent Term Adjustment is 209.

Initially, Patentee discloses that a period of reduction of 29 days under 37 CFR 1.704(b) should be entered for the filing of a reply on August 3, 2007, to the Notice to File Corrected Application Papers, three months and 29 days after the April 5, 2007 mailing date of the Notice. The Office thanks Patentee for this disclosure. A period of reduction of 29 days is merited and will be entered.

Next, Patentee maintains that the Office incorrectly calculated Office delay pursuant to 37 CFR 1.702(b). Patentee contends that the Office erred in subtracting from the "B delay" a period of time that was not "consumed by continued examination of the application." Patentee argues that (after the filing of the request for continued examination) the Office mailed a Notice of Allowance on December 30, 2010, thereby closing examination of the application on that date. Thus, Patentee argues no continued examination took place during the 132 day period from December 30, 2010 (the mailing date of the Notice of Allowance) until May 10, 2011 (the date the patent was issued). Additionally, Patentee disputes the period of time excluded from "B delay" for appellate review. Patentee argues that no appellate review by the Board of Patent Appeals and Interference occurred after the filing of the notice of appeal on July 17, 2009, and thus, no reduction of "B Delay" is provided for by 35 U.S.C. 154(b)(1)(B). Accordingly, Patentee maintains that the "B delay" should be increased from 200 to 435 days. Patentee concludes that the correct patent term adjustment is 209 days (the sum of 127 days of "A delay" and 435 days of "B delay" minus 102 days of overlap between "A delay" and "B delay" - 251 days of applicant delay).

RELEVANT STATUTE AND REGULATIONS

The statutory basis for calculation of "B delay" is 35 U.S.C. 154(b)(1)(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, which provides that:

> Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including –

(i) any time consumed by continued examination of the application requested by the applicant under section 132(b);

(ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or

(iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued.

The implementing regulation, 37 CFR 1.702(b) provides that:

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including:

(1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b);
(2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a);
(3) Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181;
(4) Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or
(5) Any delay in the processing of the application by the Office that was requested by the applicant.

OPINION

Patentee's arguments have been considered, but not found persuasive. The Office calculated the period of "B delay" pursuant to 35 U.S.C. 154(b)(1)(B)(i) and 37 CFR 1.702(b) based on the application having been filed under 35 U.S.C. 111(a) on October 25, 2006, and the patent not having issued as of the day after the three year date, October 26, 2009, and a request for continued examination under 132(b) having been filed on December

3, 2010. In other words, the 132-day period beginning on the date of mailing of the Notice of Allowance to the date of issuance of the patent was considered time consumed by continued examination of an application under 35 U.S.C. 132(b) and was not included in the "B delay." Furthermore, the 203-day period beginning on the date of the filing of the notice of appeal on July 17, 2009 to the date of the mailing of the nonfinal Office action on February 4, 2010, was considered time consumed by appellate review and was also not included in the "B delay"

The Office's calculation of "B delay" is correct. The "B delay" is an adjustment entered if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed. However, the adjustment does not include any time consumed by continued examination of the application at the request of the applicant under 35 U.S.C. 132(b)[1]. Thus, with respect to calculating the "B delay", where applicant has filed a request for continued examination the period of adjustment is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the number of days in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

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[1] Pursuant to 35 U.S.C. 132(b), 37 CFR 1.114 provides for continued examination of an application, as follows:

(a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:

(1) Payment of the issue fee, unless a petition under § 1.313 is granted;

(2) Abandonment of the application; or

(3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

(b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

Further, counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentee does not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is not any time consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56366, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

Patentee's argument that the period of time after the issuance of a notice of allowance on a request for continued examination is not "any time consumed by continued examination requested by the applicant under section 132(b)" within the meaning of 35 U.S.C. 154(b)(1)(B)(i) is not availing. This limitation is not supported by the statutory language. Garcia v. United States, 469 U.S. 70, 75 (1984) ("only the most extraordinary showing of contrary intentions from [legislative history] would justify a limitation on the 'plain meaning' of the statutory language"). BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning"). The statute provides for a guarantee of no more than 3-year application pendency, by providing for an adjustment in the patent term:

First, "Subject to the limitations of paragraph (2)," means that the limitations of paragraph 2 apply to this paragraph's adjustment of patent term. That is, the day-to-day extension of patent term for pendency beyond the 3 year period is restricted as follows: 1) "B delay" cannot accrue for days of "A delay"

that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

Second, "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of the United States) after the application filing date before an adjustment will accrue for "B delay."

Third, "not including- (i) any time consumed by continued examination of the application requested by the applicant under section 132(b); (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), meaning that the three-year period does not include "any time consumed by" or "any delay in processing," as specified in clauses (i)-(iii). This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, 580 F. Supp. 2d 138 (D.D.C. 2008), because the clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate this effect, the statute, *inter alia*,

grants adjustments of patent term whenever the patent prosecution takes more than three years, regardless of the reason. The time consumed by prosecution of the application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. The time it takes to prosecute the application ends not with the mailing of the notice of allowance, but with the issuance of the patent.

Thus, not including "any time consumed by" means not including any days used to prosecute the application as specified in clauses (i)-(ii)[2]. Clause (i) specifies "any time consumed by continued examination of the application requested by the applicant under section 132(b)." Clause (ii) specifies "any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court." "Time" in the context of this legislation throughout refers to days. "Consumed by" means used by or used in the course of. *Websters Collegiate Dictionary*, (11th ed.). The "any" signifies that the days consumed by are "any" of the days in the pendency of the application, and not just days that occur after the application has been pending for 3 years. As such, "any time consumed by" refers to any days used in the course of 1) continued examination of the application under section 132(b)(the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, and 4) appellate review. Thus, that 3-year period given to the Office to issue a patent before an adjustment will accrue for "B delay" does not include any days used in the course of or any time consumed by clauses (i)-(ii), including any time consumed by the filing of a request for continued examination.

Fourth, "the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is

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[2] Clause (iii) provides for not including (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued. It is noted that paragraph (3)(C) allows with an adequate showing by applicant for reinstatement of no more than 3 months of the patent term reduced for applicant delay in taking in excess of three months to respond.

issued" meaning that the consequence of this failure is that after "the end of that 3-year period" an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the law. See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application").

Neither the issuance of a notice of allowance nor the insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in Blacklight Power, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. See BlackLight Power, Inc. v. Rogan, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously been issued for the application. See In re Drawbaugh, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures[3] permit the filing of a request for continued examination under

[3] Thus, on occasion, even where a request for continued examination has already been filed and a notice of allowance issued pursuant to that request, applicant may file a further request for continued examination.

37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See 37 CFR 1.114(a)(1).

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the Notice of Allowance. All the time the application is pending from the date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that request. Applicant has gotten further prosecution of the application without having to file a continuing application under 37 CFR 1.53(b).

All of the continued examination pursuant to the filing of the request by the applicant is properly excluded from the delay attributed to the Office. 35 U.S.C. 154(b)(1)(B)'s guarantee of a total application pendency of no more than three years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

In this instance, a request for continued examination was filed on December 3, 2010, and the patent issued by virtue of that request on May 10, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on December 3, 2010, and ending on May 10, 2011, is not included in calculating Office delay.

Moreover, the period consumed by appellate review, whether successful or not, is excluded from the calculation of "B delay." See 35 U.S.C. 154(b)(1)(B)(ii). An appeal to the Board of Patent Appeals and Interferences commences with the filing of a notice of appeal. See 35 U.S.C. 134(a). Generally, an appeal to the Board of Patent Appeals and Interferences ends with either 1) a Board decision, 2) the examiner reopening prosecution and issuing another Office action, or 3) the

applicant filing a request to withdraw the appeal and reopen prosecution (e.g. the filing of a request for continued examination).

In this instance the period consumed by appellate review is 203 days, beginning on July 17, 2009, the date of filing of the notice of appeal and ending on February 4, 2010, the subsequent date of the mailing of a nonfinal Office action. Thus, "B delay" is 200 (403 - 203) days.

CONCLUSION

Accordingly, the patent term adjustment is 76 days (127 days of A delay + 200 days of B delay - 0 days of overlap - 251 day of applicant delay).

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentee is given **one (1) month or thirty (30) days,** whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

It is noted that the Office issued a Notice of proposed rulemaking entitled *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review and Information Disclosure Statements*, 76 FR 18990 (April 6, 2011). To the extent that the final rule on *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review* revises the interpretation of appellate review applied in this decision, Patentee is given **one (1) month or thirty (30) days,** whichever is longer, from the date of the final rule to file a request for reconsideration. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges the payment of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

This matter is being referred to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **seventy-six (76) days.**

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3211.

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,939,713 B2

DATED : May 10, 2011

INVENTOR(S) : Verbsky et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (105) days.

Delete the phrase "by 105 days" and insert – by 76 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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SEP 14 2011

OFFICE OF PETITIONS

In re Patent No. 7,939,713	:	
VERBSKY et al.	:	DECISION FOR REQUEST
Issue Date: May 10, 2011	:	FOR RECONSIDERATION
Application No. 11/552,681	:	OF PATENT TERM
Filed: October 25, 2006	:	ADJUSTMENT
Attorney Docket No. 12557-0016002	:	

This is a decision on the "RESPONSE TO DECISION ON REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT AND NOTICE OF INTENT TO ISSUE CERTIFICATE OF CORRECTION" filed August 26, 2011. Patentees request that the patent term adjustment indicated on the face of the Letters Patent be corrected from seventy-six (76) days to two hundred nine (209) days.

The request for reconsideration is granted to the extent that the determination has been reconsidered; however, the request for reconsideration of patent term adjustment is **DISMISSED.**

BACKGROUND

On May 10, 2011, the above-identified application matured into U.S. Patent No. 7,939,713, with a revised patent term adjustment of 105 days. This revised determination included an entry of a period of adjustment of 200 days pursuant to 37 CFR 1.702(b) for the Office taking in excess of three years to issue the patent.

On July 11, 2011, patentees filed a petition under 37 CFR 1.705(d) requesting that the patent term adjustment be reflected as 209 days. By decision mailed July 29, 2011, the request for reconsideration was granted only to the extent that a period of

reduction of 29 days pursuant to 37 CFR 1.704(b) was entered. The revised patent term adjustment was corrected to 76 days.

On August 26, 2011, patentees filed the present request for reconsideration. Patentees again dispute the calculation of the "B delay" period of the patent term adjustment. Specifically, patentees assert:

> Patentees submit that B Delay accumulated for a total of 562 days, beginning on October 26, 2009 (the day after the date that is three years after the date on which the application was filed), and ending May 10, 2011 (the date the patent was issued). The Office has excluded from B Delay the number of days corresponding to the period beginning on August 25, 2010 (the date on which a Request for Continued Examination was filed) and ending on May 10, 2011 (the date the patent was issued). However, this entire period should not be excluded from B Delay because it does not correspond in its entirety to continued examination. The Notice of Allowance Action mailed on December 30, 2010, closed examination of the application on that date. Section 154(b)(1)(B)(i) of Title 35 excludes from B Delay 'time consumed by continued examination of the application.' The statute does not provide for exclusion from B Delay of time from the mailing of a Notice of Allowance until issuance (a period during which continued examination did not occur).
>
> * * *
>
> The Office has excluded from B Delay the number of days corresponding to the period beginning on July 17, 2009 (the date on which a Notice of Appeal was filed) and ending on February 4, 2010 (the date of mailing of a non-Final Office Action by the USPTO). However, this period should not be excluded from B Delay because it does not correspond to appellate review by the Board of Patent Appeals and Interferences. The Examiner's withdrawal of the final rejection in favor of a non-Final Office Action mailed on February 4, 2010, precluded appellate review by the Board from occurring. Section 154(b)(1)(B)(ii) of Title 35 excludes from B Delay 'time consumed by appellate review by the Board of Patent Appeals and Interferences.' The statute does not provide for exclusion from B Delay of time from

the filing of a Notice of Appeal until the Examiner's mailing of a non-Final Office Action (a period during which appellate review by the Board of Patent Appeals and Interferences did not occur).

"Response to Decision on Request for Reconsideration of Patent Term Adjustment" filed August 26, 2011, pp. 2-3.

STATUTE AND REGULATION

35 U.S.C. 154(b) as amended by § 4402 of the American Inventors Protection Act of 1999[1] (AIPA) provides that:

ADJUSTMENT OF PATENT TERM. –

(1) PATENT TERM GUARANTEES. –

(A) GUARANTEE OF PROMPT PATENT AND TRADEMARK OFFICE RESPONSES. – Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the Patent and Trademark Office to –

(i) provide at least one of the notifications under section 132 of this title or a notice of allowance under section 151 of this title not later than 14 months after –

(I) the date on which an application was filed under section 111(a) of this title; or

(II) the date on which an international application fulfilled the requirements of section 371 of this title;

(ii) respond to a reply under section 132, or to an appeal taken under section 134, within 4 months after the date on which the reply was filed or the appeal was taken;

(iii) act on an application within 4 months after the date of a decision by the Board of Patent Appeals and Interferences under section 134 or 135 or a decision by a Federal court under section 141, 145, or 146 in a case in which allowable claims remain in the application; or

(iv) issue a patent within 4 months after the date on which the issue fee was paid under section 151 and all outstanding requirements were satisfied, the term of the patent shall be extended 1 day for each day after the end of the period specified in clause (i), (ii), (iii), or

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[1] Public Law 106-113, 113 Stat. 1501, 1501A-557 through 1501A-560 (1999).

(iv), as the case may be, until the action described in such clause is taken.

(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY. – Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including –

(i) any time consumed by continued examination of the application requested by the applicant under section 132(b);

(ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or

(iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued.

(C) GUARANTEE OR ADJUSTMENTS FOR DELAYS DUE TO INTERFERENCES, SECRECY ORDERS, AND APPEALS. – Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to –

(i) a proceeding under section 135(a);

(ii) the imposition of an order under section 181; or

(iii) appellate review by the Board of Patent Appeals and Interferences or by a Federal court in a case in which the patent was issued under a decision in the review reversing an adverse determination of patentability, the term of the patent shall be extended 1 day for each day of the pendency of the proceeding, order, or review, as the case may be.

(2) LIMITATIONS. –

(A) IN GENERAL. – To the extent that periods of delay attributable to grounds specified in paragraph (1) overlap, the period of any adjustment granted under this subsection shall not exceed the actual number of days the issuance of the patent was delayed.

The implementing regulation, 37 CFR 1.702, provides grounds for adjustment of patent term due to examination delay under the Patent Term Guarantee Act of 1999 (original applications, other than designs, filed on or after May 29, 2000).

> (a) Failure to take certain actions within specified time frames. Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to:
>
> (1) Mail at least one of a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than fourteen months after the date on which the application was filed under 35 U.S.C. 111(a) or fulfilled the requirements of 35 U.S.C. 371 in an international application;
>
> (2) Respond to a reply under 35 U.S.C. 132 or to an appeal taken under 35 U.S.C. 134 not later than four months after the date on which the reply was filed or the appeal was taken;
>
> (3) Act on an application not later than four months after the date of a decision by the Board of Patent Appeals and Interferences under 35 U.S.C. 134 or 135 or a decision by a Federal court under 35 U.S.C. 141, 145, or 146 where at least one allowable claim remains in the application; or
>
> (4) Issue a patent not later than four months after the date on which the issue fee was paid under 35 U.S.C. 151 and all outstanding requirements were satisfied.
>
> (b) Failure to issue a patent within three years of the actual filing date of the application. Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including[2]:

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[2] (1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b);

(2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a);

(3) Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181;

In pertinent part, 37 CFR 1.703 provides for calculation of the periods, as follows:

Period of adjustment of patent term due to examination delay.

(a) The period of adjustment under § 1.702(a) is the sum of the following periods:

(1) The number of days, if any, in the period beginning on the day after the date that is fourteen months after the date on which the application was filed under 35 U.S.C. 111(a) or fulfilled the requirements of 35 U.S.C. 371 and ending on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first;

(2) The number of days, if any, in the period beginning on the day after the date that is four months after the date a reply under § 1.111 was filed and ending on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first;

(3) The number of days, if any, in the period beginning on the day after the date that is four months after the date a reply in compliance with § 1.113(c) was filed and ending on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first;

(4) The number of days, if any, in the period beginning on the day after the date that is four months after the date an appeal brief in compliance with § 41.37 of this title was filed and ending on the date of mailing of any of an examiner's answer under § 41.39 of this title, an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first;

(5) The number of days, if any, in the period beginning on the day after the date that is four months after the date of a final decision by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145 or 146 where at least one allowable claim remains in the application and ending on the date of

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(4) Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or

(5) Any delay in the processing of the application by the Office that was requested by the applicant.

mailing of either an action under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151, whichever occurs first; and

(6) The number of days, if any, in the period beginning on the day after the date that is four months after the date the issue fee was paid and all outstanding requirements were satisfied and ending on the date a patent was issued.

(b) The period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the sum of the following periods[3]:

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[3] (1) The number of days, if any, in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued;

(2)(i) The number of days, if any, in the period beginning on the date an interference was declared or redeclared to involve the application in the interference and ending on the date that the interference was terminated with respect to the application; and (ii) The number of days, if any, in the period beginning on the date prosecution in the application was suspended by the Office due to interference proceedings under 35 U.S.C. 135(a) not involving the application and ending on the date of the termination of the suspension;

(3)(i) The number of days, if any, the application was maintained in a sealed condition under 35 U.S.C. 181; (ii) The number of days, if any, in the period beginning on the date of mailing of an examiner's answer under § 41.39 of this title in the application under secrecy order and ending on the date the secrecy order was removed; (iii) The number of days, if any, in the period beginning on the date applicant was notified that an interference would be declared but for the secrecy order and ending on the date the secrecy order was removed; and (iv) The number of days, if any, in the period beginning on the date of notification under § 5.3(c) of this chapter and ending on the date of mailing of the notice of allowance under 35 U.S.C. 151; and,

(4) The number of days, if any, in the period beginning on the date on which a notice of appeal to the Board of Patent Appeals and Interferences was filed under 35 U.S.C. 134 and § 41.31 of this title and ending on the date of the last decision by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145, or on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first, if

37 CFR 1.703(f) provides that:

> The adjustment will run from the expiration date of the patent as set forth in 35 U.S.C. 154(a)(2). To the extent that periods of delay attributable to the grounds specified in §1.702 overlap, the period of adjustment granted under this section shall not exceed the actual number of days the issuance of the patent was delayed. The term of a patent entitled to adjustment under § 1.702 and this section shall be adjusted for the sum of the periods calculated under paragraphs (a) through (e) of this section, to the extent that such periods are not overlapping, less the sum of the periods calculated under § 1.704. The date indicated on any certificate of mailing or transmission under § 1.8 shall not be taken into account in this calculation.

OPINION

Patentees' arguments have again been considered, but are not persuasive. The Office's calculation of "B delay" is correct. The "B delay" is an adjustment entered if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed. However, the adjustment does not include, among other things, any time consumed by continued examination of the application at the request of the applicant under 35 U.S.C. 132(b)[4]. With respect to calculating the "B

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the appeal did not result in a decision by the Board of Patent Appeals and Interferences.

[4] Pursuant to 35 U.S.C. 132(b), 37 CFR 1.114 provides for continued examination of an application, as follows:

(a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:

(1) Payment of the issue fee, unless a petition under § 1.313 is granted;

(2) Abandonment of the application; or

(3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

delay" where applicant has filed a request for continued examination, the period of adjustment is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the number of days in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued. Further, counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentees do not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is not any time consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56366, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

Patentees' argument that the period of time after the issuance of a notice of allowance on a request for continued examination is not "any time consumed by continued examination requested by the applicant under section 132(b)" within the meaning of 35 U.S.C. 154(b)(1)(B)(i) is not availing. This limitation is not

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(b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

supported by the statutory language. Garcia v. United States, 469 U.S. 70, 75 (1984) ("only the most extraordinary showing of contrary intentions from [legislative history] would justify a limitation on the 'plain meaning' of the statutory language"). BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning"). The statute provides for a guarantee of no more than 3-year application pendency, by providing for an adjustment in the patent term:

First, "Subject to the limitations of paragraph (2)," means that the limitations of paragraph 2 apply to this paragraph's adjustment of patent term. That is, the day-to-day extension of patent term for pendency beyond the 3 year period is restricted as follows: 1) "B delay" cannot accrue for days of "A delay" that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

Second, "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of the United States) after the application filing date before an adjustment will accrue for "B delay."

Third, "not including- (i) any time consumed by continued examination of the application requested by the applicant under section 132(b); (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), meaning that the three-year period does not include "any time consumed

by" or "any delay in processing," as specified in clauses (i)-(iii). This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, 580 F. Supp.2d 138(D.D.C., September 30, 2008), because the clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate this effect, the statute, *inter alia*, grants adjustments of patent term whenever the patent prosecution takes more than three years, regardless of the reason. The time consumed by prosecution of the application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. The time it takes to prosecute the application ends not with the mailing of the notice of allowance, but with the issuance of the patent.

Thus, not including "any time consumed by" means not including any days used to prosecute the application as specified in clauses (i)-(ii)[5]. Clause (i) specifies "any time consumed by continued examination of the application requested by the applicant under section 132(b)." Clause (ii) specifies "any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court." "Time" in the context of this legislation throughout refers to days. "Consumed by"

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[5] Clause (iii) provides for not including (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued. It is noted that paragraph (3)(C) allows with an adequate showing by applicant for reinstatement of no more than 3 months of the patent term reduced for applicant delay in taking in excess of three months to respond.

means used by or used in the course of. *Websters Collegiate Dictionary*, (11th ed.). The "any" signifies that the days consumed by are "any" of the days in the pendency of the application, and not just days that occur after the application has been pending for 3 years. As such, "any time consumed by" refers to any days used in the course of 1) continued examination of the application under section 132(b)(the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, and 4) appellate review. Thus, that 3-year period given to the Office to issue a patent before an adjustment will accrue for "B delay" does not include any days used in the course of or any time consumed by clauses (i)-(ii), including any time consumed by the filing of a request for continued examination.

Fourth, "the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued" meaning that the consequence of this failure is that after "the end of that 3-year period" an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the law. See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new

invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance.

Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in Blacklight Power, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. See Blacklight Power, Inc. v. Rogan, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously been issued for the application. See In re Drawbaugh, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures[6] permits the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See 37 CFR 1.114(a)(1).

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the notice of allowance. All the time the application is pending from the date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that request. Applicant has gotten further prosecution of the application without having to file a continuing application under 37 CFR 1.53(b).

All of the continued examination pursuant to the filing of the request by the applicant is properly excluded from the delay attributed to the Office. 35 U.S.C. 154(b)(1)(B)'s guarantee of a total application pendency of no more than three years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to

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[6] Thus, on occasion, even where a request for continued examination has already been filed and a notice of allowance issued pursuant to that request, applicant may file a further request for continued examination.

examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

In this instance, a request for continued examination was filed on December 3, 2010, and the patent issued by virtue of that request on May 10, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on December 3, 2010, and ending on May 10, 2011, is not included in calculating Office delay.

Moreover, the period consumed by appellate review, whether successful or not, is excluded from the calculation of "B delay." See 35 U.S.C. 154(b)(1)(B)(ii). An appeal to the Board of Patent Appeals and Interferences commences with the filing of a notice of appeal. See 35 U.S.C. 134(a). Generally, an appeal to the Board of Patent Appeals and Interferences ends with either 1) a Board decision, 2) the examiner reopening prosecution and issuing another Office action, or 3) the applicant filing a request to withdraw the appeal and reopen prosecution (e.g. the filing of a request for continued examination).

In this instance the period consumed by appellate review is 203 days, beginning on July 17, 2009, the date of filing of the notice of appeal and ending on February 4, 2010, the subsequent date of the mailing of a nonfinal Office action.

In view thereof, the patent term adjustment is 76 days.

CONCLUSION

The request for reconsideration of the revised patent term adjustment is dismissed to the extent indicated herein.
It is noted that the Office issued a Notice of proposed rulemaking entitled *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review and Information Disclosure Statements*, 76 FR 18990 (April 6, 2011). To the extent that the final rule on *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review* revises the interpretation of appellate review applied in this decision, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the date of the final rule to file a

request for reconsideration. No extensions of time will be granted under 37 CFR 1.136.

The Office acknowledges the previous submission of the $200.00 fee set forth in 37 CFR 1.18(e). As this request pertains only to the over 3-year delay issue previously raised in the application for patent term adjustment, no additional fees are required.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3211.

Christina T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney,
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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MOTOROLA, INC.
1303 EAST ALGONQUIN ROAD
IL01/3RD
SCHAUMBURG IL 60196

MAILED

AUG 18 2010

OFFICE OF PETITIONS

In re Application of :
Xiao, et al. :
Application No. 11/552,716 :
Filed: 25 October, 2006 :
Attorney Docket No. CE14902R :

DECISION

This is a decision on the petition filed on 17 June, 2010, to revive an application pursuant to 37 C.F.R. §1.137(b) as having been abandoned due to unintentional delay.

The petition pursuant to 37 C.F.R. §1.137(b) is **GRANTED**.

As to the Allegations
of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement and/or showing of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee.

BACKGROUND

The record reflects as follows:

Petitioner failed to reply timely and properly to the final Office action mailed on 11 December, 2009, with reply due absent extension of time on or before 11 March, 2010.

The application went abandoned by operation of law after midnight 11 March, 2010.

It does not appear that the Office mailed the Notice of Abandonment before a petition was filed.

On 17 June, 2010, Petitioner filed, *inter alia*, a petition with fee pursuant to 37 C.F.R. §1.137(b), a reply in the form of a request (and fee) for continued examination (RCE) and a submission pursuant to 37 C.F.R. §1.114 in the form of an amendment, and made the statement of unintentional delay.

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

Out of an abundance of caution, Petitioners always are reminded that those registered to practice and all others who make representations before the Office **must** inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[1]

STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).[2]
The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a Petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority.

Unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[3]))

As to Allegations of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee.

It appears that the requirements under the rule have been satisfied.

---

[1] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

[2] 35 U.S.C. §133 provides:

35 U.S.C. §133 Time for prosecuting application.
Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

[3] Therefore, by example, an unintentional delay in the reply might occur if the reply and transmittal form are to be prepared for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely deposited for shipment.

CONCLUSION

Accordingly, the petition pursuant to 37 C.F.R. §1.137(b) is **granted**.

The instant application is released to Technology Center 2611 for further processing in due course.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the instant decision to ensure that the revival has been acknowledged by the TC/AU in response to this decision. It is noted that all inquiries with regard to status need be directed to the TC/AU where that change of status must be effected—that does not occur in the Office of Petitions.

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2[4]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

/John J. Gillon, Jr./
John J. Gillon, Jr.
Senior Attorney
Office of Petitions

[4] The regulations at 37 C.F.R. §1.2 provide:

§1.2 Business to be transacted in writing.

All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No.

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MAILED
SEP 26 2011
OFFICE OF PETITIONS

In re Patent No. 7,979,425	:	
Garg et al.	:	DECISION ON
Issue Date: July 12, 2011	:	REQUEST FOR
Application No. 11/552,751	:	RECONSIDERATION OF
Filed: October 25, 2006	:	PATENT TERM ADJUSTMENT
Attorney Docket No. 16113-0147001	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR § 1.705(d)," filed September 12, 2011, requesting that the patent term adjustment determination for the above-identified patent be changed from zero (0) days to forty-four (44) days.

The request for reconsideration of patent term adjustment is **DISMISSED**.

BACKGROUND

On July 12, 2011, the above-identified application matured into US Patent No. 7,979,125 with a patent term adjustment of 0 days. This request for reconsideration of patent term adjustment was timely filed within two months of the issue date of the patent. See 37 C.F.R. § 1.705(d).

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Patentee has indicated that this patent is not subject to a terminal disclaimer.[1]

[1] Petition, page 4.

Patentee maintains entitlement to a period of adjustment due to the Three Year Delay by the Office, pursuant to 37 CFR § 1.703(b), of 63 days.

RELEVANT STATUTE AND REGULATIONS

The statutory basis for calculation of "B delay" is 35 U.S.C. 154(b)(1)(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, which provides that:

Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including –

> (i) any time consumed by continued examination of the application requested by the applicant under section 132(b);
> (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or
> (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued.

The implementing regulation, 37 C.F.R. § 1.702(b) provides that:

> Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including:
> (1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b);
> (2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a);
> (3) Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181;
> (4) Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or
> (5) Any delay in the processing of the application by the Office that was requested by the applicant.

OPINION

The sole item that is in dispute is the effect of the RCE-cutoff on B-delay: at issue is the period not included in the B-delay for "any time consumed by continued examination of the application requested by the applicant under section 132(b)." See U.S.C. 154(b)(1)(B)(i). **The Office maintains that the entire period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period.** As such, there is no B-delay, due to the fact that the over three-year period begins on October 26, 2009, which is subsequent to the filing of the first RCE on October 13, 2009.

Patentee argues that the 63-day period between the mailing of the notice of allowance on May 11, 2011 and the issuance of the patent on July 12, 2011 should be included in the period of B-delay, as this time "was not 'consumed by continued examination of the application."[2] As such, Patentee argues that the over three-year period begins May 11, 2011 with the mailing of the notice of allowance, and ends on July 12, 2011 with the issuance of the patent.

Patentee's argument has been considered, but not found persuasive. Counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentee does not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is time consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35

[2] Id. at 3.

U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56365, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

Patentee's argument that the period of time after the issuance of a notice of allowance on a request for continued examination is not "any time consumed by continued examination"[3] requested by the applicant under section 132(b) within the meaning of 35 U.S.C. 154(b)(1)(B)(i) is not availing. This limitation is not supported by the statutory language. Garcia v. United States, 469 U.S. 70, 75 (1984) ("only the most extraordinary showing of contrary intentions from [legislative history] would justify a limitation on the 'plain meaning' of the statutory language"). BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning"). The statute provides for a guarantee of no more than 3-year application pendency, by providing for an adjustment in the patent term:

First, "Subject to the limitations of paragraph (2)," means that the limitations of paragraph 2 apply to this paragraph's adjustment of patent term. That is, the day-to-day extension of patent term for pendency beyond the 3 year period is restricted as follows: 1) "B delay" cannot accrue for days of "A delay" that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

Second, "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of

[3] Id. at 2.

the United States) after the application filing date before an adjustment will accrue for "B delay."

Third, "not including- (i) any time consumed by continued examination of the application requested by the applicant under section 132(b); (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), meaning that the three-year period does not include "any time consumed by" or "any delay in processing," as specified in clauses (i)-(iii). This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, No. 07-1492, 580 F.Supp.2d 138 (D.D.C., September 30, 2008), because the clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate this effect, the statute, *inter alia*, grants adjustments of patent term whenever the patent prosecution takes more than three years, regardless of the reason. The time consumed by prosecution of the application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. The time it takes to prosecute the application ends not with the mailing of the notice of allowance, but with the issuance of the patent.

Thus, not including "any time consumed by" means not including any days used to prosecute the application as specified in clauses (i)-(ii)[4]. Clause (i) specifies "any time consumed by

[4] Clause (iii) provides for not including (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period

continued examination of the application requested by the applicant under section 132(b)." Clause (ii) specifies "any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court." "Time" in the context of this legislation throughout refers to days. "Consumed by" means used by or used in the course of. *Websters Collegiate Dictionary*, (11th ed.). The "any" signifies that the days consumed by are "any" of the days in the pendency of the application, and not just days that occur after the application has been pending for 3 years. As such, "any time consumed by" refers to any days used in the course of 1) continued examination of the application under section 132(b) (the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, and 4) appellate review. Thus, that 3-year period given to the Office to issue a patent before an adjustment will accrue for "B delay" does not include any days used in the course of or any time consumed by clauses (i)-(ii), including any time consumed by the filing of a request for continued examination.

Fourth, "the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued" meaning that the consequence of this failure is that after "the end of that 3-year period" an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d). Thus, clause (i) is

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until the patent is issued. It is noted that paragraph (3)(C) allows with an adequate showing by applicant for reinstatement of no more than 3 months of the patent term reduced for applicant delay in taking in excess of three months to respond.

different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the law. See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in Blacklight Power, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. See

BlackLight Power, Inc. v. Rogan, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously been issued for the application. See In re Drawbaugh, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (*i.e.*, until a patent is granted or the application is abandoned). See 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures[5] permit the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See 37 CFR 1.114(a)(1).

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the notice of allowance. All the time the application is pending from the date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that request. Applicant has gotten further prosecution of the application without having to file a continuing application under 37 CFR 1.53(b).

All of the continued examination pursuant to the filing of the request by the applicant is properly excluded from the delay attributed to the Office. 35 U.S.C. 154(b)(1)(B)'s guarantee of

[5] Thus, on occasion, even where a request for continued examination has already been filed and a notice of allowance issued pursuant to that request, applicant may file a further request for continued examination.

a total application pendency of no more than three years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

Accordingly, at issuance, the Office properly entered 0 additional days of patent term adjustment for the Office taking in excess of 3 years to issue the patent. It follows that Patentee is entitled to a patent term adjustment of 0 days:

	238 days of examination delay
+	0 days attributable to the Office taking in excess of 3 years to issue the patent
–	0 days of overlap
–	257 days of applicant delay.

CONCLUSION

In view thereof, no adjustment to the patent term will be made. It follows that a certificate of correction is not required.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. § 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. § 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Any response to this decision should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski, and may be submitted by mail,[6] hand-delivery,[7] or facsimile.[8]

---

[6] Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

[7] Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.

[8] (571) 273-8300: please note this is a central facsimile number.

Registered users of EFS-Web may alternatively submit a response to this decision via EFS-Web.[9]

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3225.[10]

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

[9] https://sportal.uspto.gov/authenticate/authenticateuserlocalepf.html

[10] Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 10/26/11

TO SPE OF : ART UNIT 2159

SUBJECT : Request for Certificate of Correction for Appl. No.: 11552751 Patent No.: 7979425

CofC mailroom date: 10/21/11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580
You can fax the Directors/SPE response to 571-273-3421

Note: **Should the changes in the claims be approved?**

Lamonte Newsome

Certificates of Correction Branch

571-272-3421

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

☒ **Approved** — **All** changes apply.

☐ **Approved in Part** — Specify below which changes **do not** apply.

☐ **Denied** — State the reasons for denial below.

Comments: _____

JAMES K. TRUJILLO
SUPERVISORY PATENT EXAMINER

2159

SPE **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

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SEATTLE, WA 98111-1208

MAILED
JAN 11 2012
OFFICE OF PETITIONS

In re Application of
David Losan Ho, et al.
Application No. 11/552,789
Filed: October 25, 2006
Attorney Docket No. 62991.8001.US00

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed December 9, 2011.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others.

The request was signed by Michael J. Wise on behalf of all attorneys of record who are associated with customer No. 34055. All attorneys/agents associated with the Customer Number 34055 have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

The correspondence address of record has been changed and the new correspondence address is the address indicated below.

There is an outstanding Office action mailed July 21, 2011 that requires a reply from the applicant.

Telephone inquiries concerning this decision should be directed to undersigned at 571-272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

cc: MAMTEK INTERNATIONAL, LTD.
C/O JACK DECANIO, SKADDEN ARPS
SLATE MEAGHER & FLOAM, LLP
300 S. GRAND AVENUE
SUITE 3400
LOS ANGELES, CA 90071

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/552,789	10/25/2006	David Losan Ho	62991.8001.US00

CONFIRMATION NO. 2693

POWER OF ATTORNEY NOTICE

34055
PERKINS COIE LLP
POST OFFICE BOX 1208
SEATTLE, WA 98111-1208

OC00000051894302

Date Mailed: 01/09/2012

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 12/09/2011.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

/amwise/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

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PERKINS COIE LLP
POST OFFICE BOX 1208
SEATTLE, WA 98111-1208

MAILED

JAN 24 2012

OFFICE OF PETITIONS

In re Application of
David Losan Ho, et al.
Application No. 11/552,813
Filed: October 25, 2006
Attorney Docket No. 62991.8002.US00

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed December 9, 2011.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others.

The request was signed by Michael J. Wise on behalf of all attorneys of record who are associated with customer No. 34055. All attorneys/agents associated with the Customer Number 34055 have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

The correspondence address of record has been changed and the new correspondence address is the address indicated below.

There are no pending office actions at the present time.

Telephone inquiries concerning this decision should be directed to undersigned at 571-272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

cc: MAMTEK INTERNATIONAL, LTD.
C/O JACK DECANIO, SKADDEN ARPS
SLATE MEAGHER & FLOAM, LLP
300 S. GRAND AVENUE
SUITE 3400
LOS ANGELES, CA 90071

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/552,813	10/25/2006	David Losan Ho	62991.8002.US00

CONFIRMATION NO. 2722

POWER OF ATTORNEY NOTICE

34055
PERKINS COIE LLP
POST OFFICE BOX 1208
SEATTLE, WA 98111-1208

OC00000052007948

Date Mailed: 01/13/2012

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 12/09/2011.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

/amwise/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

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TEXAS INSTRUMENTS INCORPORATED
P.O. BOX 655474, M/S 3999
DALLAS TX 75265

MAILED

MAR 11 2011

OFFICE OF PETITIONS

In re Application of :
Neveux :
Application No. 11/552,841 : DECISION ON PETITION
Filed: October 25, 2006 :
Attorney Docket No. TI-60204 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 13, 2010, to revive the above-identified application.

The petition is **GRANTED**.

37 CFR 1.137(b)(3) requires a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." Since the statement appearing in the petition varies from the language required by 37 CFR 1.137(b)(3), the statement is being construed as the required statement. Petitioner must notify the Office if this is **not** a correct reading of the statement appearing in the petition.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an amendment/drawings; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the nonfinal Office action mailed July 31, 2009, is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.

This application is being referred to Technology Center AU 2439 for appropriate action by the Examiner in the normal course of business on the reply received December 13, 2010.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MINTZ LEVIN COHN FERRIS GLOVSKY AND POPEO PC
ONE FINANCIAL CENTER
BOSTON MA 02111

MAILED
APR 25 2011
OFFICE OF PETITIONS

In re	: DECISION ON APPLICATION
Dale	: FOR PATENT TERM ADJUSTMENT
Application No. 11/552,951	: AND NOTICE OF INTENT
Filed: October 25, 2006	: TO ISSUE
Patent No. 7,868,162	: CERTIFICATE OF CORRECTION
Issued: January 11, 2011	:

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM INDICATED ON FACE OF PATENT UNDER 37 C.F.R. §1.705(d)", filed March 10, 2011. Patentee requests that the patent term adjustment under 35 U.S.C. 154(b) be corrected from seven hundred seventy-five (775) days to eight hundred eighty-six (886) days.

The application for patent term adjustment is **GRANTED**.

The Patent Term Adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **eight hundred eighty-six (886) days**.

On February 22, 2010, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the instant application. The Notice stated that the patent term adjustment (PTA) to date was four hundred fifty-two (452) days. On May 20, 2010, Applicant filed a "COMMUNICATION REGARDING PATENT TERM ADJUSTMENT", which was a candor letter indicating that the 452 days of patent term accorded was thought to be longer than appropriate. On January 11, 2011, the application issued into Patent No. 7,868,162, with a patent term adjustment of seven hundred seventy-five (775) days.

A review of the file reveals that Applicants were assessed delay of one hundred twenty (120) days for filing the "COMMUNICATION REGARDING PATENT TERM ADJUSTMENT" on May 20, 2010. Pursuant to 37 C.F.R. § 1.704(e), the submission of an application for patent term adjustment will not be considered a failure to engage in reasonable efforts to conclude prosecution of the application. Likewise, the submission of a candor letter will not be considered a failure to engage in reasonable efforts to conclude prosecution of the application. Accordingly, zero (0) days should have been assessed for this filing.

Applicant also points out that he should have been assessed additional days of Applicant delay pursuant to 37 CFR 1.704(c)(8). Applicants filed an Amendment on December 28, 2009. Subsequently, Applicants filed an IDS on December 30, 2009, and were properly assessed Applicant delay under 37 CFR 1.704(c)(8) of two (2) days. However, Applicant filed an additional supplemental IDS on January 8, 2010, and were not assessed any additional days of delay. Pursuant to 37 CFR 1.704(c)(8), nine (9) additional days of Applicant delay should have been assessed for this supplemental filing.

In view thereof, the correct determination of patent term adjustment is eight hundred eighty-six (886) days (991 days of PTO delay, reduced by 105 (94+2+9) days of applicant delay).

Receipt of the $200 fee is acknowledged.

The application is being forwarded to the Certificate of Corrections Branch for issuance of a certificate of correction, indicating a Patent Term Adjustment of **eight hundred eighty-six (886) days.**

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

Anthony Knight
Director
Office of Petitions

Enclosure: draft Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

DRAFT CERTIFICATE OF CORRECTION

PATENT : 7,867,162 B2

DATED : **January 11, 2011**

INVENTOR(S) : Dale

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 775 days.

Delete the phrase "by 775 days" and insert – by 886 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Alexandria, VA 22313-1450
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December 1, 2010

Max Moskowitz
Ostrolenk Faber LLP
1180 Avenue of the Americas
New York, NY 10036-8403

Patent No.	: 7,824,407 B2
Ser. No.	: 11/553,084
Inventor(s)	: Hironori, et al.
Issued	: November 2, 2010
Docket No.	: P/2850-152 (V17463)
Title	: **TREATMENT TOOL FOR ENDOSCOPE**

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of Rule(s) 1.322 and/or 1.323.

Assignees' names and addresses (assignment data) printed in a patent, are based *solely* on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing ***incorrect or erroneous*** assignment data, *before* issuance of a Certificate of Correction, under 37 CFR 1.323 *(see Manual of Patent Examining Procedures (M.P.E.P) Chp.1400, sect. 1481).* This procedure is required *at any time after the issue fee is paid*, including after issuance of the patent.

In view of the foregoing, your request, in this matter, is hereby denied.

A request to correct the Assignee under 37 CFR 3.81(b) should include:

A. **the processing fee set forth in 37 CFR 1. 17(i) (currently $130);**
B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
C. a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

By mail:	Mail Stop PETITIONS Commissioner for Patents Post Office Box 1450 Alexandria, VA 22313-1450
By hand:	Customer Service Window Mail Stop Petitions Randolph Building 401 Dulany Street Alexandria, VA 22314
By fax:	(571) 273-0025 ATTN: Office of Petitions

If a fee (currently $100) was previously submitted for consideration of a Request for Certificate of Correction, under CFR 1.323, to correct assignment data, no additional fee is required.

/Virginia Tolbert/
Virginia Tolbert
For Mary Diggs
Decisions & Certificates
of Correction Branch
(571) 272-0460 or (703) 756-1814

vt

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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OSTROLENK FABER GERB & SOFFEN
1180 AVENUE OF THE AMERICAS
NEW YORK NY 10036-8403

MAILED
FEB 03 2011
OFFICE OF PETITIONS

In re Patent No. 7,824,407 :
Application No. 11/553,084 :
Filed: October 26, 2006 : ON PETITION
Issued: November 2, 2010 :
Attorney Docket No. P/2850-152 :

This is a decision on the petition filed December 10, 2010, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **GRANTED**.

This matter is being referred to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-7751. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

Joan Olszewski
Petitions Examiner
Office of Petitions

[1] *See* MPEP 1309, subsection II; and Official Gazette of June 22, 2004.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
Alexandria, VA 22313-1450
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**ZIOLKOWSKI PATENT SOLUTIONS,
GROUP SC (ZPS)
136 S WISCONSIN ST
PORT WASHINGTON, WI 53074**

MAILED

AUG 13 2010

OFFICE OF PETITIONS

In re Application of	:	
Michael H. NARUS, et al	:	
Application No. 11/553,087	:	DECISION ON PETITION
Filed: October 26, 2006	:	TO WITHDRAW
Attorney Docket No. JLV74620.128	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed July 20, 2010.

The request is **NOT APPROVED because it is moot**.

A review of the file record indicates that the power of attorney to Gregory V. Madden and the attorneys of record associated with Customer No. 26629, has been revoked by the assignee of the patent application on August 9, 2010. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

Telephone inquires concerning this decision should be directed to undersigned at (571) 272-6735.

/dcg/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/553,087	10/26/2006	Michael H. Narus	JLV74620.128

CONFIRMATION NO. 3192

23409
MICHAEL BEST & FRIEDRICH LLP
100 E WISCONSIN AVENUE
Suite 3300
MILWAUKEE, WI 53202

POA ACCEPTANCE LETTER

Date Mailed: 08/13/2010

NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 08/09/2010.

The Power of Attorney in this application is accepted. Correspondence in this application will be mailed to the above address as provided by 37 CFR 1.33.

/dcgoodwyn/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/553,087	10/26/2006	Michael H. Narus	JLV74620.128

CONFIRMATION NO. 3192

26629
ZIOLKOWSKI PATENT SOLUTIONS GROUP, SC (ZPS)
136 S WISCONSIN ST
PORT WASHINGTON, WI 53074

POWER OF ATTORNEY NOTICE

Date Mailed: 08/13/2010

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 08/09/2010.

- The Power of Attorney to you in this application has been revoked by the assignee who has intervened as provided by 37 CFR 3.71. Future correspondence will be mailed to the new address of record(37 CFR 1.33).

/dcgoodwyn/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

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PHILIP S. JOHNSON
JOHNSON & JOHNSON
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK NJ 08933-7003

MAILED

AUG 10 2010

OFFICE OF PETITIONS

In re Application of :
Neelakandha, et al. :
Application No. 11/553,154 : ON APPLICATION FOR
Filed: October 26, 2006 : PATENT TERM ADJUSTMENT
Atty Docket No. **PRD2559USNP**

This is in response to the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. 1.705(b) WITHIN THREE MONTHS OF RECEIPT OF THE NOTICE OF ALLOWANCE", filed July 20, 2010. Applicants submit that the correct patent term adjustment to be indicated on the patent is eight hundred and thirty-four (834) days, not five hundred and sixty-six (566) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request this correction solely on the basis that the Office will take in excess of three years to issue this patent.

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee[1].

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

---

[1] For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Senior Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 8/13/10

TO SPE OF : ART UNIT 3728 (3700)

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/553,169 Patent No.: 7,748,144

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Ernest C. White, LPE
Randolph Sq. Ste 9D62A
703-756-1590

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriate box.

XApproved All changes apply.

☐ **Approved in Part** Specify below which changes **do not** apply.

☐ **Denied** State the reasons for denial below.

Approved by examiner.

SPE /MY/ ART UNIT 3728

Doc Code: PET.AUTO Document Description: Petition automatically granted by EFS-Web	PTO/SB/140 U.S. Patent and Trademark Office Department of Commerce

Electronic Petition Request	**PETITION TO WITHDRAW AN APPLICATION FROM ISSUE AFTER PAYMENT OF THE ISSUE FEE UNDER 37 CFR 1.313(c)**
Application Number	11553171
Filing Date	26-Oct-2006
First Named Inventor	Masayoshi Hashima
Art Unit	2628
Examiner Name	PHI HOANG
Attorney Docket Number	06-50453
Title	IMAGE PROCESS APPARATUS FOR THREE-DIMENSIONAL MODEL

An application may be withdrawn from issue for further action upon petition by the applicant. To request that the Office withdraw an application from issue, applicant must file a petition under this section including the fee set forth in § 1.17(h) and a showing of good and sufficient reasons why withdrawal of the application from issue is necessary.

APPLICANT HEREBY PETITIONS TO WITHDRAW THIS APPLICATION FROM ISSUE UNDER 37 CFR 1.313(c).

A grantable petition requires the following items:
(1) Petition fee; and
(2) One of the following reasons:
(a) Unpatentability of one or more claims, which must be accompanied by an unequivocal statement that one or more claims are unpatentable, an amendment to such claim or claims, and an explanation as to how the amendment causes such claim or claims to be patentable;
(b) Consideration of a request for continued examination in compliance with § 1.114 (for a utility or plant application only); or
(c) Express abandonment of the application. Such express abandonment may be in favor of a continuing application, but not a CPA under 37 CFR 1.53(d).

Petition Fee

☐ Applicant claims SMALL ENTITY status. See 37 CFR 1.27.

☐ Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

☐ Applicant(s) status remains as SMALL ENTITY.

☒ Applicant(s) status remains as other than SMALL ENTITY

Reason for withdrawal from issue

◯ One or more claims are unpatentable ◉ Consideration of a request for continued examination (RCE) (List of Required Documents and Fees) ◯ Applicant hereby expressly abandons the instant application (any attorney/agent signing for this reason must have power of attorney pursuant to 37 CFR 1.32(b)).
RCE request,submission, and fee. ☒ I certify, in accordance with 37 CFR 1.4(d)(4) that : The RCE request ,submission, and fee have already been filed in the above-identified application on 2011.08.18 ☐ Are attached.
THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES I certify, in accordance with 37 CFR 1.4(d)(4) that I am: ◉ An attorney or agent registered to practice before the Patent and Trademark Office who has been given power of attorney in this application. ◯ An attorney or agent registered to practice before the Patent and Trademark Office, acting in a representative capacity. ◯ A sole inventor ◯ A joint inventor; I certify that I am authorized to sign this submission on behalf of all of the inventors ◯ A joint inventor; all of whom are signing this e-petition ◯ The assignee of record of the entire interest that has properly made itself of record pursuant to 37 CFR 3.71

Signature	/Raphael A. Valencia/
Name	Raphael A. Valencia
Registration Number	43216

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Decision Date : August 18,2011

In re Application of :

Masayoshi Hashima

DECISION ON PETITION

UNDER CFR 1.313(c)(2)

Application No : 11553171

Filed : 26-Oct-2006

Attorney Docket No : 06-50453

This is an electronic decision on the petition under 37 CFR 1.313(c)(2), filed August 18,2011 , to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid in this application cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.

Telephone inquiries concerning this decision should be directed to the Patent Electronic Business Center (EBC) at 866-217-9197.

This application file is being referred to Technology Center AU 2628 for processing of the request for continuing examination under 37 CFR 1.114 .

Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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FISH & RICHARDSON P.C. (DC)
P.O. BOX 1022
MINNEAPOLIS, MN 55440-1022

MAILED

JAN 28 2011

OFFICE OF PETITIONS

In re Application of :
Shunpei Yamazaki et al :
Application No. 11/553,197 : ON PETITION
Filed: October 26, 2006 :
Attorney Docket No. 07977-0266003

This is a decision on the petition, filed January 27, 2011 under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on December 16, 2010 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to Irvin Dingle at (571) 272-3210.

This matter is being referred to Technology Center AU 2629 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

/Irvin Dingle/
Irvin Dingle
Petitions Examiner
Office of Petitions

[1] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above. Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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FISH & RICHARDSON P.C. (DC)
P.O. BOX 1022
MINNEAPOLIS MN 55440-1022

MAILED
MAR 21 2011
OFFICE OF PETITIONS

In re Application of :
Shunpei Yamazaki, et al. :
Application No. 11/553,197 : DECISION GRANTING PETITION
Filed: October 26, 2006 : UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 07977-0266003 :

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, March 21, 2011 to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). *See* 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on February 17, 2011 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to Terri Johnson at (571) 272-2991.

This application is being referred to Technology Center AU 2629 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.*

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NEW BRUNSWICK NJ 08933-7003

MAILED

SEP 21 2010

OFFICE OF PETITIONS

In re Patent No. 7,712,610
Issued: May 11, 2010
Application No. 11/553,257
Filed: October 26, 2006
Attorney Docket No. DDI5132USNP

: DECISION ON REQUEST
: FOR RECONSIDERATION
: OF PATENT TERM ADJUSTMENT
: AND
: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

This is a decision on the DISCLOSURE LETTER PATENT TERM ADJUSTMENT DETERMINATION 37 CFR 1.705 filed on July 12, 2010, requesting that the patent term adjustment indicated on the above-identified patent be corrected. Applicant requests this correction in part on the basis that the Office will take in excess of three years to issue this patent and in light of the Court of Appeals for the Federal Circuit's decision in *Wyeth v. Kappos*, 2009-1120 (Fed. Cir. 1-7-2010).

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by eight hundred forty-three (843) days is **GRANTED to the extent indicated herein**.

At the outset, applicants are correct that no request for continued examination (RCE) was filed on January 4, 2009. Instead, a review of the file reveals that the request for continued examination (RCE) was filed on January 4, 2010 in response to the Final Office Action mailed October 19, 2009 and thus, as As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period begins on October 26, 2009 and ends on January 3, 2010, the day before the RCE was filed, the B delay is 69 days. See 35 U.S.C. 154(b)(1)(B)(i).

As such, the patent term adjustment is 843 (774 "A delay" days plus 69 "B delay" days minus 0 applicant delay days).

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **eight hundred forty-three (843)** days.

Telephone inquiries specific to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,712,610 B2

DATED : May 11, 2010

INVENTOR(S) : Bryan Tissington

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (774) days

Delete the phrase "by 774 days" and insert – by 843 days--

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FEB 14 2011

OFFICE OF PETITIONS

In re Application of	:	
Todd et al.	:	
Application No. 11/553,319	:	DECISION ON PETITION
Filed: October 26, 2006	:	
Attorney Docket No. 0108-0293/US	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 12, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a proper and timely manner to the final Office action mailed, June 21, 2010, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on September 22, 2010. A Notice of Abandonment was mailed January 5, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $810.00 and the submission required by 37 CFR 1.114; (2) the petition fee of $1,620.00; and (3) a proper statement of unintentional delay.

Additionally, it is not apparent whether the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute this patent application. In accordance with 37 CFR 1.34(a), the signature appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he/she is authorized to represent the particular party in whose behalf he/she acts.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

This matter is being referred to Technology Center AU 2617 for processing of the Request for Continued Examination under 37 CFR 1.114 and the Amendment filed with the instant petition.

Joan Olszewski
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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755 PAGE MILL RD
PALO ALTO CA 94304-1018

MAILED

SEP 20 2010

OFFICE OF PETITIONS

In re Application :
Neil P. Desai et al. :
Application No. 11/553,339 : DECISION ON APPLICATION
Filed: October 26, 2006 : FOR PATENT TERM ADJUSTMENT
Attorney Docket No. 638772000301 :

This is in response to the APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705 filed June 3, 2010. Applicant requests that the determination of patent term adjustment be corrected from 0 days to 175 days. Applicant requests this correction in part on the basis that the Office will take in excess of three years to issue this patent and in light of the recent court decision in *Wyeth v. Kappos*, 2009-1120 (Fed. Cir. 1-7-2010).

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within three years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentees are entitled to for Office failure to issue the patent within three years. See 37 CFR 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under 37 CFR 1.702(a)(4) or applicant delay under 37 CFR 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office cannot make a determination on the patent term adjustment relating to those provisions until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss such a request as premature.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicants are advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicants must timely file an application for patent term adjustment prior to the payment of the issue fee.[1]

To the extent that applicant otherwise requests correction of the patent term adjustment at the time of the mailing of the Notice of Allowance, the application for patent term adjustment is **DISMISSED**.

On June 1, 2010, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 0 days. On June 3, 2010, applicant timely submitted the instant application for patent term adjustment[2]. Applicant maintains an additional period of adjustment in the amount of 112 days should be entered for a total of 112 days under 37 C.F.R. § 1.703(a). Applicant argues that the Office mailed a non-Final Office action on May 12, 2008 and then withdrew the Office Action and replaced it with a non-Final Office Action mailed October 10, 2008, and as such, applicants are requesting 112 days of examination delay.

Applicant states that the above-identified application is not subject to a terminal disclaimer.

Applicant's argument has been considered, but not found persuasive. An Office Action was mailed on May 12, 2008, thereafter, a second Office Action was mailed on October 10, 2008. The mailing of a second Office action withdrawing the first action does not negate the fact that the Office took action in this application within the meaning of § 1.702(a)(1) on May 12, 2008. Accordingly, entry of a period of adjustment of 112 days for Office delay in mailing a further notification is not warranted.

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[1] For example, if applicants dispute both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed, and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicants must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the § 1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

[2] PALM records indicate that the issue fee was also paid on June 3, 2010.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

The application is being forwarded to the Office of Data Management for issuance of the patent. The patent term adjustment indicated on the patent will include any additional patent term adjustment accrued for Office delay in issuing the patent after payment of the issue fee and all outstanding requirements having been met.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212.

Anthony Knight
Director
Office of Petitions

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Catherine M. Polizzi
Morrison & Foerster LLP
755 Page Mill Road
Palo Alto, California 94304-1018

In re Patent No. 7,820,788	:
Desai et al.	: DECISION UPON REMAND AND
Issue Date: October 26, 2010	: RECONSIDERATION OF
Application No. 11/553,339	: PATENT TERM ADJUSTMENT
Filed: October 26, 2006	: AND NOTICE OF INTENT
Attorney Docket No. 638772000301	: TO ISSUE CERTIFICATE OF
Title: Compositions and Methods of Delivery	: CORRECTION
Of Pharmacological Agents	:

This is a decision following remand from the United States District Court for the District of Columbia regarding the patent term adjustment indicated on the above-identified patent. The Court remanded this matter to the U.S. Patent and Trademark Office ("USPTO") for recalculation of the patent term adjustment (hereinafter referred to as PTA).

Procedural History

1. The patent application was filed on October 26, 2006, and the patent issued on October 26, 2010.

2. Applicant filed a Request for Continued Examination (RCE) on April 14, 2010.

3. On June 1, 2010, the USPTO mailed a Notice of Allowance to appellant that determined PTA to be zero days.

4. On June 3, 2010, Patentee filed an Application for Patent Term Adjustment under 37 CFR 1.705. The application was timely filed with the payment of the issue fee.

5. On September 20, 2010, the USPTO dismissed as premature patentee's request for additional patent term adjustment based upon 37 CFR 1.702(b). In addition, the USPTO dismissed patentee's request for additional PTA under 37 CFR 1.702(a)(1).

6. On October 6, 2010, the Office mailed an issue notification letter that notified patentee of an 85 day PTA determination. The patent issued on October 26, 2010.

7. On December 23, 2010, the patentee timely filed a Request for Reconsideration of Patent Term Adjustment under 37 CFR 1.705.

8. On April 15, 2011, patentee filed a complaint in the District Court of the District of Columbia under 35 U.S.C. 154(b)(4)(A) seeking alternative amounts of PTA. Patentee sought alternatively 319 or 321 days of PTA.

9. On November 1, 2011, the District Court for the District of Columbia remanded the civil action back to the USPTO with consent of all parties for a recalculation of the PTA.

10. On December 13, 2011, patentee submitted a communication to the USPTO addressing patentee's arguments as to the amount of PTA that should have been awarded.

Patentee's Arguments

"A" Delay

Patentee asserts that the correct amount of delay per 35 U.S.C. 154(b)(1)(A) [hereinafter, "A" delay] is 135 days.

Patentee asserts that the Office is correct in granting 23 days of "A" delay per 35 U.S.C. 154(b)(1)(A)(iv) in failing to issue the patent within four months of payment of the issue fee and other outstanding requirements being satisfied.

Patentee further alleges that the USPTO failed to provide an additional 112 days of "A" delay under 35 U.S.C. 154(b)(1)(A)(ii) for failing to mail an action under 35 U.S.C. 132 within four months after the Patentee's response to election requirement was mailed on February 20, 2008. Patentee alleges that the Office's withdrawal of the Office action mailed May 12, 2008 by replacing it with another Office action mailed October 10, 2008 led to the Office's failure to meet the statutory requirement. Patentee noted that the Office action was withdrawn since the USPTO cited the wrong reference in the 103 rejection.

"B" Delay

Patentee alleges that the correct amount of delay per 35 U.S.C. 154(b)(1)(B) [hereinafter, "B" delay] is alternatively 314 or 316 days.

Patentee alleges that the statutory reduction of the "B" delay for "time consumed by continued examination of the application requested under section 132(b)" i.e., 35 U.S.C. 154(b)(1)(B)(i), should not include any period that occurs between the notice of allowance and the issuance of the patent or, alternatively, between the payment of the issue fee and the issuance of the patent. Under this alleged statutory scheme, a patentee would not earn any "B" delay from the time of the filing of the Request for Continued Examination (RCE) until the date of the mailing of the notice of allowance. However, once the USPTO mails the notice of allowance, then "B" delay should again accrue until the date that the patent issues. Alternatively, under the second theory, "B" delay should not accrue from the date of the RCE until the date of the payment of the issue fee. Under patentee's second theory, once the issue fee is paid, then "B" delay should accrue until the grant date of the patent because that period is not considered "continued examination of the application."

Patentee alleges that the period of time between the notice of allowance and the issuance of the patent is not considered "examination" of the patent and therefore should not be considered to be "time consumed by continued examination" that is excluded from the "B" delay period. Patentee asserts that the mailing of the notice of allowance closes prosecution of the application and thus cannot be considered a part of the examination period.

Patentee further asserts that the Office treats the statutory reduction of the "B" delay for "any time consumed by appellate review by the Board of Patent Appeals and Interferences" i.e., 35 U.S.C. 154(b)(1)(B)(ii), as encompassing only the period from the notice of appeal until the notice of allowance and does not reduce the amount of "B" delay for the period of time extending from the notice of allowance until the issuance of the patent. Patentee alleges that this distinction is arbitrary and capricious in the implementation of the statute.

Overlap

Patentee asserts that under its statutory interpretation of "B" delay, the amount of days of USPTO delay that would overlap. per 35 U.S.C. 154(b)(2)(A), between "A" delay and "B" delay would be 23 days.

Applicant Delay

Patentee does not contest the determination of 107 days of applicant delay.

Overall PTA Calculation

Formula:

"A" delay + "B" delay + "C" delay - Overlap - applicant delay = X

Patentee's Calculations:

a) 135 + 316 + 0 - 23 - 107 = 321

b) 135 + 314 + 0 - 23 - 107 = 319

USPTO's Calculation:

135 + 169 + 0 - 0 - 105 = 199

Decision

Upon remand, the Office finds that the correct amount of PTA at the time of the issuance of the patent is **one hundred and ninety-nine (199) days** of PTA.

The Office finds that based upon the specific facts of the application, patentee is correct in determining the amount of "A" delay to be 135 days.

In addition, the Office finds that the amount of "B" delay, 169 days, as determined by the Office is accurate. The Office has reviewed patentee's arguments relating to the "B" delay but such are not deemed persuasive.

The USPTO's regulation set forth at 37 CFR 1.703(b)(1) addresses the issue of whether the Office granted the proper amount of "B" delay in this case. In relevant part, 37 CFR 1.703(b)(1) states that "B" delay does not include the following period: "The number of days, if any, in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued." In determining the amount of "B" delay, the USPTO acted consistent with this regulation. The patentee challenges the regulation itself and argues that it is inconsistent with 35 U.S.C. 154(b)(1)(B) under its theory of statutory construction.

35 U.S.C. 154(b)(1)(B) excludes the following three categories of time and delay from the amount of "B" delay:

(i) any time consumed by continued examination of the application requested by the applicant under section 132(b);

(ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or

(iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C).

This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given to the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)). The Office notes that the phrase "not including ... the term of the patent shall be extended 1 day for each day after the end of **that 3-year period** until the patent is issued" in 35 U.S.C. 154(b)(1)(B) is important in determining the statutory construction. The phrase "that 3-year period" refers to not only the period from the three-year anniversary date to date of issuance but also makes clear that such period should not include any of the periods enumerated in 35 U.S.C. 154(b)(1)(B)(i)-(iii) when determining amount of days of "B" delay.

Hence, when calculating the number of days the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date of the actual filing date of the application in the United States, any days that occurred subsequent to the filing of the RCE are considered "time consumed by continued examination of the application requested by the applicant under section 132(b)" and are not included within the "B" delay tally. This determination is reflected in the USPTO's regulation found at 37 CFR 1.703(b)(1). In this instance, the application was filed on October 26, 2006, an RCE was filed on April 14, 2010, and the patent issued on October 26, 2010. The "B" delay period begins on October 27, 2009 and ends on April 13, 2010, the day before the first RCE was filed, which amounts to 169 days. The period from April 14, 2010 to (and including) October 26, 2010 would not be included in the amount of "B" delay, pursuant to 37 CFR 1.703(b)(1).

Patentee's argument that the period of time after the issuance of a notice of allowance on a request for continued examination is not "any time consumed by continued examination requested by the applicant under section 132(b)" within the meaning of 35 U.S.C. 154(b)(1)(B)(i) is not availing. This limitation is not supported by the statutory language. Garcia v. United States, 469 U.S. 70, 75 (1984) ("only the most extraordinary showing of contrary intentions from [legislative history] would justify a limitation on the 'plain meaning' of the statutory language"); BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning"). Under the plain meaning of the statute, not including "any time consumed by" means not including any days used during the periods of time specified in clauses (i)-(iii) of 35 U.S.C. 154(b)(1)(B). Clause (i) excludes "any time consumed by continued examination of the application requested by the applicant under section 132(b)."[1] "Time" in the context of this

[1] Clause (ii) of 35 U.S.C. 154(b)(1)(B) excludes "any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court." Clause (iii) provides for not including "any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C)" as "B" delay. Neither clause (ii) nor (iii) is directly at issue here.

propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the issuance of an Office action terminates the examination process. For example, if after the issuance of an Office action under 35 U.S.C. 132 it appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor. Thus, the examination process continues until issuance of a patent.

As held in Blacklight Power, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. See BlackLight Power, Inc. v. Rogan, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously been issued for the application. See In re Drawbaugh, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the examination procedures[2] permit the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See 37 CFR 1.114(a)(1).

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the notice of allowance.[3] All the time the application is pending from the date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request

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[2] Thus, on occasion, even where a request for continued examination has already been filed and a notice of allowance issued pursuant to that request, applicant may file a further request for continued examination.

[3] Likewise, for the same reasons stated in this decision, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the payment of the issue fee by the applicant.

for continued examination. Further action by the Office is pursuant to that request. By filing an RCE, applicant has gotten the benefit of further prosecution of the application without having to file a continuing application under 37 CFR 1.53(b).

All of the continued examination pursuant to the filing of the RCE by the applicant is properly excluded from the delay attributed to the Office. 35 U.S.C. 154(b)(1)(B)'s guarantee of a total application pendency of no more than three years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

Moreover, the Office has expressly addressed the basis of patentee's argument when promulgating the final rule set forth in 37 CFR 1.703(b)(1). See "Changes to Implement Patent Term Adjustment Under Twenty Year Patent Term, Final Rule," Vol. 65, No. 181 Fed. Reg. 56375-56376:

Comment 8: One comment objected to the exclusion from the three-year period in § 1.703(b)(1) of the period of time in which a request for continued examination under 35 U.S.C. 132(b) and § 1.114 is processed. The comment argues that filing a request for continued examination should not preclude an applicant from obtaining a term adjustment for printing delays of a patent.

Response: 35 U.S.C. 154(b)(1)(B) provides that an applicant may receive a term adjustment if the application is not issued within three years of the filing date of the application, excluding (among other things) any time consumed by continued examination requested under 35 U.S.C. 132(b). Once a request for continued examination under 35 U.S.C. 132(b) and § 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and § 1.114. Nevertheless, if a request for continued examination is filed in an application, the applicant may still accrue patent term adjustment under 35 U.S.C. 154(b)(1)(A) or (C). Accordingly, if two years after the filing date of an application, a request for continued examination is filed, and three years after the filing date of the application, the issue fee is paid (and all outstanding requirements are satisfied), but the patent does not issue as a patent until four years after the application's filing date, applicant may be entitled to an eight-month term adjustment because the application did not issue within four months of payment of the issue fee. Since the request for continued examination was filed within three years of the filing date of the application, applicant cannot accrue any term adjustment under the "three-year" statutory basis (35 U.S.C.154(b)(1)(B)), but may accrue patent term adjustment under the other bases (e.g., 35 U.S.C. 154(b)(1)(A)(iv)).

legislation throughout refers to days. "Consumed by" means used by or used in the course of. Webster's Collegiate Dictionary, (11th ed.). The term "any" is broad and signifies that the days "consumed by" are "any" of the days in the pendency of the application. As such, "any time consumed by" refers to any days used in the course of, for example, 1) continued examination of the application under section 132(b) (i.e., the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, and 4) appellate review.

Moreover, the context of the legislation should be considered. As stated in Wyeth v. Dudas, 580 F. Supp. 2d 138, 139, 88 U.S.P.Q. 2d. 1538 (D.D.C. 2008), because the clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to examine the application. To mitigate this effect, the statute, inter alia, grants adjustments of patent term whenever the patent examination takes more than three years, subject to certain limitations. The time consumed by examination of the application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. The time it takes to examine the application ends not with the mailing of the notice of allowance, but with the issuance of the patent.

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the American Inventors Protection Act of 1999 ("AIPA"), which also amended 35 U.S.C. 154(b) to its current form. Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (i.e., request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d). Thus, clause (i) of 35 U.S.C. 154(b)(1)(B) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

By its nature, the time used in the course of the examination process continues until issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the law. See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the

The USPTO's construction of the statute is further supported by the legislative history, which states that the period of time following the submission of an RCE is not delay caused by the USPTO and is not counted for determining if the patent issues within three years:

Any periods of time-- (1) consumed in the continued examination of the application under §132(b) of the Patent Act as added by section 4403 of this Act; ... shall not be considered a delay by the USPTO and shall not be counted for purposes of determining whether the patent issued within three years from the actual filing date.

145 Cong. Rec. H11802-03 (Nov. 9, 1999). Hence, the filing of an RCE stops the accrual of any time with respect to accumulation of "B" delay.

As for amount of overlapping days, the Office finds that none of the days overlap within the meaning of 35 USC 154(b)(2)(A). Because the "A" delay occurred after the filing of an RCE and accordingly "B" delay stops accruing, the Office does not find the 23 days accrued under 35 USC 154(b)(1)(A)(iv) to overlap with the "B" days of delay.

As for the amount of applicant delay, the Office finds that the proper amount of applicant delay is 105 days. The Office notes that the original Office calculation accrued 107 days of applicant delay. However, upon review, the Office finds that the two-day reduction of applicant delay for the filing of the response to non-final rejection on January 12, 2009 is not a reduction. January 10, 2009 was a Saturday and accordingly, a response filed on Monday January 12, 2009 would be deemed timely for purposes of 35 USC 154(b)(2)(C)(ii). See ArQule, Inc. v. Kappos, 793 F. Supp. 2d 214 (D.D.C. 2011).

Conclusion

Patentee is entitled to a patent term adjustment of **ONE HUNDRED AND NINETY NINE (199)** days. Using the formula "A" delay + "B" delay + "C" delay - Overlap - applicant delay = X, the amount of PTA is calculated as following: 135 + 169 + 0 - 0 - 105 = 199 days.

Patentee disagreeing with this determination has thirty days or one month whichever is longer to reply to this decision. After the time period has expired, the Office will *sua sponte* issue a certificate of correction in the amount determined.

Telephone inquiries specific to this matter should be directed to Senior Legal Advisor, Kery A. Fries at (571) 272-7757.

/Kery A. Fries/

Kery A. Fries
Senior Legal Advisor Attorney
Office of Patent Legal Administration
Office of Associate Commissioner

For Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450

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OCT 07 2011
OFFICE OF PETITIONS

Polster, Lieder, Woodruff & Lucchesi, L.C.
12412 Powerscourt Dr. Suite 200
St. Louis MO 63131-3615

In re Application of :
George DUBE : ON PETITION
Application No. 11/553,396 :
Filed: October 26, 2006 :
Atty. Docket No.: META 9768U1

This is in response to the communication filed September 12, 2011 captioned as "Petition to Accord a Filing Date," that is being treated as a petition to withdraw the holding the abandonment of the above-identified application. The petition is being considered under the provisions of 37 CFR 1.8(b).

The petition is **GRANTED.**

Petitioner requests the Notice of Abandonment mailed August 25, 2011 for failure to timely file an appeal brief (and appeal brief fee), following the filing of a Notice of Appeal on December 30, 2010, be withdrawn as petitioner timely filed an appeal brief. Petitioner has included a copy of the appeal brief filed by mail bearing a certificate of mailing dated March 30, 2011.

The file record does not include the originally submitted papers. Failure to receive correspondence which includes a certificate of mailing is addressed in 37 CFR 1.8(b), reproduced below:

> In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:
>
> (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

The petition satisfies the above requirements of 37 CFR 1.8(b). Accordingly, the holding of abandonment for failure to timely file an appeal brief is hereby withdrawn and the application restored to pending status.

The copy of the appeal brief received with the petition will be accepted in place of the reply shown to have been mailed March 30, 2011. The fee for filing the Appeal Brief and the required fee for a one (1) month extension of time have been charged to Deposit Account 16-2201, as authorized.

Telephone inquiries relating to this decision should be directed to Robert DeWitty, Petitions Attorney, Office of Petitions (571-272-8427).

The application will be referred to Technology Center Art Unit 2886 for consideration of the filed appeal brief.

Rajnesh Krishnamurthy

for Anthony Knight
Director
Office of Petitions

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Foley & Lardner LLP
150 EAST GILMAN STREET
P.O. BOX 1497
MADISON WI 53701-1497

MAILED

JUN 21 2011

OFFICE OF PETITIONS

In re Application of	:	
Geoffrey B. Rhoads	:	ON REQUEST FOR
Application No. 11/553406	:	RECONSIDERATION OF
Filing or 371(c) Date: 10/26/2006	:	PATENT TERM ADJUSTMENT
Atty Docket No.:	:	
098888-1016	:	

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT FOR PATENT APPLICATION UNDER 37 C.F.R. § 1.705(b), filed May 12, 2011. Applicant requests an adjustment of the patent term to indicate a total Patent Term Adjustment of 1039 days, not 661 days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicant requests this correction solely on the basis that the Office will take in excess of three years to issue this patent. The application for patent term adjustment is properly treated under 37 C.F.R. § 1.705(b).

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee[1].

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and ***must*** include payment of the required fee under 37 CFR 1.18(e).

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

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[1] For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

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STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.
1100 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005

MAILED

JUL 11 2011

OFFICE OF PETITIONS

In re Application of :
James J. Fallon :
Application No.: 11/553,419 : ON PETITION
Filed: October 26, 2006 :
Attorney Docket No.: 2855.0030008 :

This is a decision on the petition, filed July 7, 2011, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on May 24, 2011, cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries relating to this decision should be directed to the undersigned at (571) 272-3204.

The application is being referred to Technology Center AU 2455 for further processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement (IDS).

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.*

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1100 NEW YORK AVENUE, N.W.
WASHINGTON DC 20005

MAILED
JUL 18 2011
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In re Application of	:	
James J. Fallon	:	
Application No. 11/553,427	:	DECISION GRANTING PETITION
Filed: October 26, 2006	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 2855.003000A	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, July 14, 2011 to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). *See* 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on June 7, 2011 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to Terri Johnson at (571) 272-2991.

This application is being referred to Technology Center AU 2455 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.*

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Sarfaraz K. Niazi
20 Riverside Drive
Deerfield, IL 60015

MAILED

OCT 21 2010

OFFICE OF PETITIONS

In re Application of :
Mirihanage Don Jayantha Wijayabandara, et. :
al. : ON PETITION
Application No. 11/553,465 :
Filed: October 26, 2006 :
Attorney Docket No. 2006-15 :

This is a decision on the renewed petition under 37 CFR 1.137(b), filed March 31, 2010, to revive the above-identified application.

The petition is **dismissed**.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D). The instant petition lacks item(s) (1).

In response to the decision mailed March 11, 2010, petitioner submits a renewed petition along with a Pre-Appeal Brief Request for Review filed on March 31, 2010. However, the Pre-Appeal Brief Request for Review filed on March 31, 2010, does not contain the signature of petitioner and the required Notice of Appeal and the $270 fee is missing[1]. Therefore, the Pre-Appeal Brief Request for Review is improper and a proper response must be submitted.

Additionally, it is noted that on the renewed petition/response, petitioner failed to contain his registration number as part of his signature, immediately below or adjacent to his S-signature. 37 CFR 1.4(d)(2), states in part "A patent practitioner (§ 1.32(a)(1)), signing pursuant to §§ 1.33(b)(1) or 1.33(b)(2), must supply his/her registration number either as part of the S-signature, or immediately below or adjacent to the S-signature. The number (#) character may be used only as part of the S-signature when appearing before a practitioner's registration number; otherwise the number character may not be used in an S-signature". Thus, when using an S-signature on **any** document, a registration number needs to be provided.

[1] Petitioner should note that a Pre-Appeal Brief Request for Review takes place after a Notice of Appeal and fee has been filed.

The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2).

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

Further correspondence with respect to this matter should be addressed as follows:

By mail:
Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

By hand:
U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

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Alexandria, VA 22313-1450
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KWONG, YUK HO HENRY
11/F, MINERVA HOUSE, 34 LYTTELTON ROAD
MID-LEVELS, HONG KONG
HONG KONG HK **HONG KONG**

MAILED

MAR 10 2011

OFFICE OF PETITIONS

In re Application of	:	
Henry Yuk Ho Kwong	:	
Application No. 11/553,468	:	ON PETITION
Filed: October 27, 2006	:	
Attorney Docket No. N/A	:	

This is a decision on the petition under 37 CFR 1.137(b), filed January 4, 2011, to revive the above-identified application.

The application became abandoned for failure to file a reply to the Restriction/Election Requirement mailed May 26, 2010. A Notice of Abandonment was mailed on October 4, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment; (2) the petition fee of $810; and (3) a proper statement of unintentional delay. Therefore, the petition is **GRANTED**.

This application file is being referred to Technology Center Art Unit 2889 for review of the amendment filed with the present petition.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

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STROOCK & STROOCK & LAVAN LLP
180 MAIDEN LANE
NEW YORK, NY 10038

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AUG 04 2010

OFFICE OF PETITIONS

In re Patent No. 7,665,833	:	
Issue Date: February 23, 2010	:	
Application No. 11/553,537	:	DECISION ON PETITION
Filed: October 27, 2006	:	
Attorney Docket No. 448563/0311	:	

This is a decision on the petition under 37 CFR 1.182, filed July 12, 2010, requesting issuance of a duplicate Letters Patent for the above-identified patent.

The petition is **GRANTED**.

The fee of $400 for the petition under 37 CFR 1.182 has been assessed to petitioner's deposit account as authorized.

The Publishing Division is directed to issue a duplicate Letters Patent.

Telephone inquiries concerning this decision may be directed to Alicia Kelley at (571) 272-6059. Inquiries regarding the issuance the duplicate Letters Patent may be directed to Niomi Farmer in the Office at Data Management at (703) 756-1556.

A copy of this decision is being faxed to the Office of Data Management for issuance of a duplicate Letters Patent.

Carl Friedman
Petitions Examiner
Office of Petitions

cc: Niomi Farmer, RSQ, 9th Floor, Room D30-B. (Fax No. (571) 270-9753)

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SEP 19 2011

OFFICE OF PETITIONS

MYERS BIGEL SIBLEY & SAJOVEC
PO BOX 37428
RALEIGH NC 27627

In re Patent No. 7,314,941 :
Issue Date: January 1, 2008 :
Application No. 11/553,542 : NOTICE
Filed: October 27, 2006 :
Attorney Docket No. 5051-644DV :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

Inquiries related to this communication should be directed to Diane Goodwyn at (571) 272-6735.

/tkp/ Thurman K. Page
Petitions Examiner
Office of Petitions

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P.O. Box 1450

MOTOROLA MOBILITY, INC
600 NORTH US HIGHWAY 45
W2-55BB
LIBERTYVILLE IL 60048-5343

MAILED
MAR 22 2011
OFFICE OF PETITIONS

In re Application of	:	
Joseph PATINO et al	:	DECISION GRANTING PETITION
Application No. 11/553,559	:	UNDER 37 CFR 1.137(b)
Filed: October 27, 2006	:	
Atty. Docket No.: CE15727JEM	:	

This is a decision on the petition under 37 CFR 1.137(b), filed January 27, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the Notice of Allowance and Fee(s) Due mailed October 1, 2010, which set a statutory period of reply of three (3) months. The application became abandoned on January 2, 2011, and a Notice of Abandonment was mailed January 19, 2011.

A grantable petition under 37 CFR1.137(b) must be accompanied by: (1) the reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay for filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR1.137(d).

The petition satisfies the conditions for revival pursuant to 37 CFr 1.137(b) by including (1) a reply in the form of payment of the issue fee in accordance with the Notice of Allowance and Fee(s) Due, (2) a petition fee of $1620, and (3) a statement of unintentional delay. The reply to the Notice is accepted as having been unintentionally delayed.

Petitioner has submitted both an issue fee and a publication fee. However, the Notice of Allowance and Fee(s) Due mailed October 1, 2010 required only an issue fee of $1510. Accordingly, the paid publication fee of $300 is unnecessary, and will be refunded to petitioners deposit account 505278.

Telephone inquiries relating to this decision should be directed to Robert DeWitty, Petitions Examiner, Office of Petitions (571-272-8427).

The application file will be referred to Office of Data Management.

Ramesh Krishnamurthy

for David Bucci
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 10-20-10

TO SPE OF : ART UNIT 2821

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/553,645 Patent No.: 7,791,280

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES: Check Inventor

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriate box.

☑ **Approved**	**All** changes apply.
☐ **Approved in Part**	Specify below which changes **do not** apply.
☐ **Denied**	State the reasons for denial below.

SPE Douglas W. Owens ART UNIT 2821

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
www.uspto.gov

SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. BOX 2938
MINNEAPOLIS MN 55402

MAILED
JAN 18 2011
OFFICE OF PETITIONS

In re Application of :
Chang et al. :
Application No. 11/553,681 : DECISION ON PETITION
Filed: October 27, 2006 :
Attorney Docket No. 2447.005US1 :

This is in response to the "PETITION UNDER 37 C.F.R §1.183 FOR SUSPENSION OF THE RULES TO FILE A SUPPLEMENTAL DECLARATION" filed August 2, 2010.

The petition is **GRANTED**.

The above-identified application was filed on October 27, 2006. An executed declaration was submitted on May 25, 2007. The June 18, 2010 non-final Office action required a supplemental declaration.

Once an application has received a fully executed oath or declaration and been placed on the files for examination, the provisions of 37 CFR 1.47 no longer apply. Rather the remedy for treating an inventor's refusal to sign a supplemental declaration is waiver of 37 CFR 1.67. See MPEP 603.

When an inventor who executed the original declaration is refusing or cannot be found to execute a required supplemental declaration, the requirement for that inventor to sign the supplemental declaration may be suspended or waived in accordance with 37 CFR 1.183. It is appropriate to apply the principles of 37 CFR 1.47 thereof to the situation at hand. All available joint inventor(s) must sign the supplemental declaration on behalf of themselves, if appropriate and on behalf of the non-signing inventor. See MPEP 409.03(a).

In order for a petition under 37 CFR 1.183 to be granted to waive this requirement that inventor and legal representative Espiau sign the supplemental declaration, petitioner must demonstrate that this is an extraordinary situation where justice requires waiver of the rules.

Petitioner has shown that the non-signing inventor and legal representative Espiau has refused to join in the filing of the above-identified application after having been presented with the supplemental declaration. The petition attest a copy of the supplemental declaration was sent to Espiau. The non-signing

inventor's express refusal establishes that he refuses to execute the supplemental declaration.

The Office is also in receipt of a supplemental declaration.

This application is being referred to Technology Center AU 2821 for appropriate action by the Examiner in the normal course of business.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3215.

Charlema Grant
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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Patent No. : 7798764 B2
Application No.: 11/553820
Inventor(s) : Rice et al.
Issued : 09/21/2010
Title : SUBSTRATE PROCESSING SEQUENCE IN A CARTESIAN ROBOT CLUSTER TOOL
Docket No. : 009540.C3/DSM/PRT/JW

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of Rule(s) 1.322.

Respecting the alleged error in the printed patent about Item (56) in the Reference Cited section the Data requested on SB/44 Form is not printed because there was no 1449 submitted.

In view of the foregoing, your request, in this matter, is hereby denied.

A Certificate of Correction will be issued for the remaining errors noted in your request.

Tasneem Siddiqui
For Mary Diggs (Supervisor)
Decisions & Certificates of Correction Branch
(703) 756-1593 or (703) 756-1814
Date: 12/21/2010

Address: Keith M. Tackett
PATTERSON & SHERIDAN, L.L.P.
3040 Post Oak Blvd., Suite 1500
Houston, TX 77056

ts/MD

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 01/25/11

TO SPE OF : ART UNIT: 3652 Attn: RODRIGUEZ SAUL (SPE)

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/553820 Patent No.: 7798764

CofC Mailroom date: 12/15/10

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Tasneem Siddiqui
Certificates of Correction Branch
703-756-1593 or 703-756-1814

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

☒ **Approved**	**All** changes apply.
☐ **Approved in Part**	Specify below which changes **do not** apply.
☐ **Denied**	State the reasons for denial below.

Comments: _____

_____

_____

_____ 3652
SPE Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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HEWLETT-PACKARD COMPANY
INTELLECTUAL PROPERTY ADMINISTRATION
3404 E. HARMONY ROAD
MAIL STOP 35
FORT COLLINS CO 80528

MAILED

MAR 28 2011

OFFICE OF PETITIONS

In re Application of :
Van Brocklin et al. :
Application No. 11/553,883 : DECISION ON PETITION
Filed: October 27, 2006 :
Attorney Docket No. 200507872-1 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 18, 2011, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before January 3, 2011, as required by the Notice of Allowance and Fee(s) Due mailed October 1, 2010. Accordingly, the date of abandonment of this application is January 4, 2011. A Notice of Abandonment was mailed January 19, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1,510.00 and the publication fee of $300.00, (2) the petition fee of $1,620.00; and (3) a proper statement of unintentional delay.

It is not apparent whether the statement of unintentional delay was signed by a person who would have been in a position of knowing that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Nevertheless, in accordance with 37 CFR 10.18, the statement is accepted as constituting a certification of unintentional delay. However, in the event that petitioner has no knowledge that the delay was unintentional, petitioner must make such an inquiry to ascertain that, in fact, the delay was unintentional. If petitioner discovers that the delay was intentional, petitioner must notify the Office.

Further, it is not apparent whether the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute this patent application. In

accordance with 37 CFR 1.34(a), the signature appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he/she is authorized to represent the particular party in whose behalf he/she acts. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

This application is being referred to the Office of Data Management for processing into a patent.

Joan Olszewski
Petitions Examiner
Office of Petitions

cc: Michael Dryja
1230 E. Baseline Rd #103-248
Gilbert, AZ 85233

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Patent No. : 7,933,191 B2
Ser. No. : 11/553,883
Inventor(s) : Van Brocklin et al.
Issued : ~~Sep. 7, 2010~~ Apr. 26, 2011
Title : OPTICAL DISC DRIVE HAVING TWO OPTOMECHANICAL MECHANISMS
Docket No. : 200507872-1
Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of Rule(s) 1.322 and/or 1.323.

Assignees' names and addresses (assignment data) printed in a patent, are based *solely* on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing ***incorrect or erroneous*** assignment data, *before* issuance of a Certificate of Correction, under 37 CFR 1.323 *(see Manual of Patent Examining Procedures (M.P.E.P) Chp.1400, sect. 1481).* This procedure is required *at any time after the issue fee is paid*, including after issuance of the patent.

In view of the foregoing, your request, in this matter, is hereby denied.

A request to correct the Assignee under 37 CFR 3.81(b) should include:

A. **the processing fee set forth in 37 CFR 1. 17(i) (currently $130);**
B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
C. a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

By mail: Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand:	Customer Service Window Mail Stop Petitions Randolph Building 401 Dulany Street Alexandria, VA 22314
By fax:	(703) 872-9306 ATTN: Office of Petitions

If a fee (currently $100) was previously submitted for consideration of a Request for Certificate of Correction, under CFR 1.323, to correct assignment data, no additional fee is required.

Ennis Young
For Mary Diggs
Decisions & Certificates
of Correction Branch
(571) **272-3435** or (703) 756-1814

UNITED STATES PATENT AND TRADEMARK OFFICE

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Patents
Durect Corporation
2 Results Way
Cupertino CA 94402

MAILED
FEB 10 2011
OFFICE OF PETITIONS

In re Application of	:	
Chen et al.	:	
Application No.: 11/553925	:	ON PETITION
Filing or 371(c) Date: 10/27/2006	:	
Attorney Docket Number:	:	
DURE-315 CIP	:	

This is a decision on the renewed petition under 37 CFR 1.137(b), filed November 1, 2010, to revive the above-identified application.

This Petition is hereby **granted**.

The above-identified application became abandoned for failure to timely and properly reply to the Office communication, mailed April 1, 2010. The Office action set a one (1) month period for reply from the mail date of the Office action. Extensions of time were available under 37 CFR 1.136(a). No reply having been received, the application became abandoned on May 2, 2010.

Applicant files the present petition and includes a response to the Office communication. The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that the petition includes (1) the reply to the Office communication; (2) the petition fee; and (3) the required statement of unintentional delay. Accordingly, the reply is accepted as having been unintentionally delayed.

This application is being referred to Technology Center Art Unit 1611 for processing of the reply to the Office communication filed with the petition in due course.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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GLOBAL PATENTS
FIVE MOORE DR., PO BOX 13398
MAIL STOP: C.2111F
RESEARCH TRIANGLE PARK NC 27709-3398

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MAR 04 2011

OFFICE OF PETITIONS

In re Application of	:	
John H. Hutchinson, et al.	:	
Application No. 11/553,946	:	DECISION GRANTING PETITION
Filed: October 27, 2006	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 31951-706.201	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed March 2, 2011, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). *See* 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on January 25, 2011 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries regarding this decision should be directed to undersigned at (571) 272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

This application is being referred to Technology Center AU 1625 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.*

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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VERIZON
PATENT MANAGEMENT GROUP
1320 NORTH COURT HOUSE ROAD
9TH FLOOR
ARLINGTON VA 22201-2909

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JUL 11 2011
OFFICE OF PETITIONS

In re Application of :
Sumit Singh et al :
Application No. 11/553,957 : DECISION ON PETITION
Filed: October 27, 2006 :
Attorney Docket No. 20060305 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 8, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of the issue and publication fees; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Notice of Allowance mailed December 20, 2010, is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.

This application is being referred to the Office of Data Management to be processed into a patent.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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THE ECLIPSE GROUP LLP
10605 BALBOA BLVD., SUITE 300
GRANADA HILLS, CA 91344

MAILED

SEP 27 2010

OFFICE OF PETITIONS

In re Application of :
Sundar Raman, et al. :
Application No. 11/553,983 : DECISION ON PETITION
Filed: October 27, 2006 :
Attorney Docket No. ST05005USU :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 12, 2010, to revive the above-identified application.

There is no indication that the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. In accordance with 37 CFR 1.34(a), the signature appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he/she is authorized to represent the particular party in whose behalf he/she acts. However, if petitioner desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. All future correspondence regarding this application file will be directed solely to the address of record until otherwise instructed.

It is not apparent whether the statement of unintentional delay was signed by a person who would have been in a position of knowing that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Nevertheless, in accordance with 37 CFR 10.18, the statement is accepted as constituting a certification of unintentional delay. However, in the event that petitioner has no knowledge that the delay was unintentional, petitioner must make such an inquiry to ascertain that, in fact, the delay was unintentional. If petitioner discovers that the delay was intentional, petitioner must so notify the Office.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, September 29, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on December 30, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment with drawings, (2) the petition fee of $1620, and (3) a proper statement of unintentional delay.

In view of the above, the petition is **GRANTED**.

The application file does not indicate a change of address has been filed in this case, although the address given on the petition differs from the address of record. A change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

Telephone inquiries concerning this decision should be directed to undersigned at (571) 272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

This application is being referred to Technology Center AU 2611 for appropriate action by the Examiner in the normal course of business on the reply received August 12, 2010.

April M. Wise
Petitions Examiner
Office of Petitions

cc: KENNETH N. NIGON
PO BOX 980
VALLEY FORGE, PA 19482

UNITED STATES PATENT AND TRADEMARK OFFICE

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PO BOX 2938
MINNEAPOLIS, MN 55402

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DEC 14 2010
OFFICE OF PETITIONS

In re Application of :
Jeffrey E. Stahmann, et al. :
Application No.: 11/554,146 : ON PETITION
Filed: October 30, 2006 :
Attorney Docket No.: 279.380US3 :

This is a decision on the petition, filed December 14, 2010, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on November 24, 2010, cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries relating to this decision should be directed to the undersigned at (571) 272-3204.

The application is being referred to Technology Center AU 3766 for further processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement (IDS).

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.*

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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PERRY + CURRIER INC.
(FOR RIM)
1300 YONGE STREET
SUITE 500
TORONTO, ON M4T-1X3
CANADA

Mail Date: 01/12/2011

Applicant	: Darrell R. MAY	: DECISION ON REQUEST FOR
Patent Number	: 7661004	: RECALCULATION of PATENT
Issue Date	: 02/09/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/554,168	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 10/30/2006	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **581** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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P.O. Box 1539
King of Prussia PA 19406-0939

MAILED

OCT 20 2010

OFFICE OF PETITIONS

In re Application of :
Estrada, et al. :
Application No. 11/554,374 : ON PETITION
Filed: October 30, 2006 :
Attorney Docket No. CD 138-C1

This is a decision on the petition to withdraw the holding of abandonment filed on June 1, 2009.

The petition is **DISMISSED**.

The record reflects that a final Office action was mailed on October 2, 2008, allowing a shortened statutory period for reply of three months from its mailing date. On February 2, 2009, an amendment after final Office action was filed. On March 2, 2009, an Advisory Action was mailed advising that the amendment filed February 2, 2009, failed to place the application in condition for allowance. A Notice of Abandonment was mailed on April 27, 2009.

Petitioner maintains the imposition of the holding of abandonment was improper the Advisory Action mailed March 2, 2009, was not received.

It is first noted that the amendment after final was not filed within two months of mailing date of the final Office action, therefore, adjustments that may have been available pursuant to *MPEP* 706.07 are not available in this instance. Further, while the Office encourages the examiner to issue the Advisory Action promptly, the failure of applicant to receive an Advisory Action does not toll the period for reply as set forth in the final Office action. It is further noted that the Advisory Action does not set a new period for reply and specifically states that the period for reply remain as set forth in the final Office action. Applicants are charged with a filing a proper and timely response to all Office actions issued. If a reply filed the applicant is determined to be improper, such does not toll any time period running against the application. The holding of abandonment was properly imposed because a proper response to the final Office action was not filed within the maximum statutory period for reply.

The petition is dismissed, accordingly.

Alternatively, petitioner may revive the application based on unintentional abandonment under 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by the required reply, the required petition fee ($1620.00 for a large entity and 810.00 for a verified small entity), and a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
United States Patent and Trademark Office
Box 1450
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300
Attn: Office of Petitions

Telephone inquiries regarding this decision should be directed to the undersigned (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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GEN PROBE INCORPORATED
10210 GENETIC CENTER DRIVE
MAIL STOP #1 / PATENT DEPT.
SAN DIEGO, CA 92121

MAILED

DEC 07 2010

OFFICE OF PETITIONS

In re Application of
Robert C. Aviles et al
Application No. 11/554,394
Filed: October 30, 2006
Attorney Docket No. GP136-03.DV1

ON PETITION

This is a decision on the petition filed November 16, 2010 under 37 CFR 1.137(b), to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to submit the Issue fee and Publication Fee in a timely manner in reply to the Notice of Allowance mailed July 26, 2010, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on October 27, 2010.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of payment of the Issue fee and Publication Fee; (2) the petition fee; (3) the required statement of unintentional delay have been received. Accordingly, the issue fee is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3210.

This matter is being referred to the Office of Data Management for further processing.

Irvin Dingle
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 6/10/11

TO SPE OF : ART UNIT 1715

SUBJECT : Request for Certificate of Correction for Appl. No.: 11554428 Patent No.: 7501145

CofC mailroom date: 6/03/11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580
You can fax the Directors/SPE response to 571-270-9990

Note: Title Page, item **(54)**

Lamonte Newsome

Certificates of Correction Branch

571-272-3421

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

☒ **Approved**	**All** changes apply.
☐ **Approved in Part**	Specify below which changes **do not** apply.
☐ **Denied**	State the reasons for denial below.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Comments: _____

_____

_____

_____

_____

_____ _____

1715

SPE **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

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DALLAS TX 75265

MAILED

SEP 02 2010

OFFICE OF PETITIONS

In re Application of :
Aris Papasakellariou :
Application No. 11/554,443 : DECISION ON PETITION
Filed: October 30, 2006 :
Attorney Docket No. TI-61629 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 7, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, August 21, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on November 22, 2009. A Notice of Abandonment was mailed April 28, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an Amendment, (2) the petition fee of $1,620.00, and (3) a proper statement of unintentional delay.

Further, 37 CFR 1.137(b)(3) requires a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." Since the statement appearing in the petition varies from the language required by 37 CFR 1.137(b)(3), the statement is being construed as the required statement. Petitioner must notify the Office if this is **not** a correct reading of the statement appearing in the petition.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

This application is being referred to Technology Center AU 2618 for further appropriate action by the Examiner in the normal course of business on the reply received.

Joan Olszewski
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : May 11, 2011

TO SPE OF : ART UNIT 2464
SUBJECT : Request for Certificate of Correction for Appl. No. 11/554450 patent No.:7858080
C of C mailroom date:--05-2-11

Please respond to this request for a certificate of correction within 7 days.

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

Magdalene Talley

Certificates of Correction Branch

571-272- 0423

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

XApproved	**All** changes apply.
❑ **Approved in Part**	Specify below which changes **do not** apply.
❑ **Denied**	State the reasons for denial below.

Comments: _____

/Ricky Ngo/ AU 2464

SPE **Art Unit**

Formatted: Indent: Left: 88 pt

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TEXAS INSTRUMENTS INCORPORATED
P.O. BOX 655474, M/X 3999
DALLAS TX 75265

MAILED
SEP 20 2011
OFFICE OF PETITIONS

In re Application of :
PAPASAKELLARIOU :
Application No. 11/554,467 : DECISION ON PETITION
Filed: October 30, 2006 :
Attorney Docket No. TI-63642 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 22, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The two-month period for filing an appeal brief under 37 CFR 41.37 (accompanied by the fee required by 37 CFR 41.20(b)(2)), runs from the date of this decision.

This application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of June 1, 2010. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is September 2, 2010. A Notice of Abandonment was mailed March 30, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Notice of Appeal; (2) the petition fee of $1620; and (3) an adequate statement of unintentional delay.

37 CFR 1.137(b)(3) requires a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." Since the statement appearing in the petition varies from the language required

by 37 CFR 1.137(b)(3), the statement is being construed as the required statement. Petitioner must notify the Office if this is **not** a correct reading of the statement appearing in the petition.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

This application is being referred to Technology Center AU 2471 to await the filing of an appeal brief or for such other appropriate reply as may be submitted to continue prosecution of the application.

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

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PATTERSON & SHERIDAN, LLP - - APPM/TX
3040 POST OAK BOULEVARD, SUITE 1500
HOUSTON TX 77056

MAILED

MAY 19 2011

OFFICE OF PETITIONS

In re Application of :
Elmira Ryabova et al. :
Application No. 11/554,482 : DECISION ON PETITION
Filed: December 30, 2006 :
Attorney Docket No. 011450 / ETCH / MASK-ETCH :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 15, 2011, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before February 17, 2011, as required by the Notice of Allowance and Fee(s) Due, mailed November 17, 2010. Accordingly, the date of abandonment of this application is February 18, 2011. A Notice of Abandonment was mailed on March 2, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1,510 and the publication fee of $300, (2) the petition fee of $1,620, and (3) a proper statement of unintentional delay. Accordingly, the issue and publication fees are accepted as being unintentionally delayed.

The application file does not indicate a change of address has been filed in this case, although the address given on the petition differs from the address of record. A change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

Telephone inquiries concerning this decision should be directed to Kimberly Inabinet at (571) 272-4618.

This application is being referred to the Office of Data Management for further processing into a patent.

/Kimberly A. Inabinet/

Kimberly A. Inabinet
Petitions Examiner
Office of Petitions

cc: Keith Taboada, Esq.
Patterson & Sheridan, LLP
595 Shrewsbury, Suite 100
Shrewsbury, NJ 07702

UNITED STATES PATENT AND TRADEMARK OFFICE

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JUL 07 2011

OFFICE OF PETITIONS

PHILIP S. JOHNSON
JOHNSON & JOHNSON
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK NJ 08933-7003

In re Application of :
Shinichi MIYATA et al. : ON PETITION
Application No. 11/554,506 :
Filed: October 30, 2006 :
Atty. Docket No.: DDI5135USNP2

This is a decision on the petition under 37 CFR 1.137(b), filed June 2, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application was held abandoned for failure to reply in a timely manner to the final Office action mailed September 14, 2010, which set a shortened statutory period of reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. The application became abandoned on December 15, 2010.

The petition satisfies the conditions for revival pursuant to 37 CFR 1.137(b) by including (1) a reply in the form of a Request for Continued Examination (RCE) and RCE fee, and the submission required under 37 CFR 1.114, (2) a petition fee of $1620, and (3) a statement of unintentional delay. The reply to the final Office action is accepted as having been unintentionally delayed.

Telephone inquires regarding this decision should be directed to Robert DeWitty, Petitions Attorney, Office of Petitions (571-272-8427).

The application file will be referred to Technology Center Art Unit 3715 for further action on the filed Response.

Anthony Knight
Director
Office of Petitions

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1000 EAGLE GATE TOWER
60 EAST SOUTH TEMPLE
SALT LAKE CITY UT 84111

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DEC 23 2010

OFFICE OF PETITIONS

In re Application of	:	
Brieske et al.	:	
Application No. 11/554,524	:	ON PETITION
Filed: October 30, 2006	:	
Attorney Docket No. 15370.6	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed December 7, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an Amendment, (2) the petition fee of $810.00, and (3) a proper statement of unintentional delay.

There is no indication that the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. If the person signing the instant petition desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. While a courtesy copy of this decision is being mailed to the person signing the instant petition, all future correspondence will be directed solely to the address currently of record until such time as appropriate instructions are received to the contrary.

It is not apparent whether the statement of unintentional delay was signed by a person who would have been in a position of knowing that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Nevertheless, in accordance with 37 CFR 10.18, the statement is accepted as constituting a certification of unintentional delay. However, in the event that petitioner has no knowledge that the delay was unintentional, petitioner must make such an inquiry to ascertain that, in fact, the delay was unintentional. If petitioner discovers that the delay was intentional, petitioner must notify the Office.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3206.

This matter is being referred to Technology Center AU 3761 for further examination on the merits.

Liana Walsh
Petitions Examiner
Office of Petitions

cc: INSKEEP INTELLECTUAL PROPERTY GROUP, INC.
2281 W. 190TH STREET, SUITE 200
TORRANCE, CA 90504

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THOMAS, KAYDEN, HORSTEMEYER & RISLEY, LLP
600 GALLERIA PARKWAY, S.E.
STE 1500
ATLANTA GA 30339-5994

MAILED

MAR 14 2011

OFFICE OF PETITIONS

In re Application of :
CHUNG-HER WU ET AL. :
Application No. 11/554,646 : DECISION ON PETITION
Filed: October 31, 2006 :
Attorney Docket No. **252022-1110** :

This is a decision on the petition, filed January 19, 2011, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision should be filed within two (2) months from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment."

This application was held abandoned for failure to reply to the Notice of Non-Compliant Amendment (Notice) mailed April 5, 2010, which set a one (1) month shortened statutory period for reply. A Notice of Abandonment was mailed on January 3, 2011.

Petitioner asserts that the Notice dated April 5, 2010 was not received.

A review of the written record indicates no irregularity in the mailing of the Office action, and, in the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. In this regard, the showing required to establish the failure to receive the Office action must consist of the following:

(1) A statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.

(2) Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received.

(3) A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required. A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the **master docket report** showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question. See MPEP §711.03(c)(I)(A

See MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).

The petition fails to satisfy item (3) of the above-stated requirements.

The evidence submitted with the instant petition does not appear to be the master docket. Therefore, petitioner needs to submit a copy of the **master docket** report showing **all** replies docketed for a date of one month from April 5, 2010, mail date of the nonreceived Office action as documentary proof of nonreceipt.

Accordingly, absent the required evidence to establish nonreceipt of the Office action of April 5, 2010, the petition requesting withdrawal of the holding of abandonment cannot be granted at this time.

If petitioner cannot supply the evidence necessary to withdraw the holding of abandonment, or simply does not wish to, petitioner should consider filing a petition under 37 CFR 1.137(b) stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the petition fee required under 37 CFR 1.17(m).

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By facsimile: **(571) 273-8300**
Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to JoAnne Burke at (571) 272-4584.

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

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MAY 17 2011

OFFICE OF PETITIONS

THOMAS, KAYDEN, HORSTEMEYER & RISLEY, LLP
600 GALLERIA PARKWAY, S.E.
STE 1500
ATLANTA GA 30339-5994

In re Application of :
CHUNG-HER WU ET AL. :
Application No. 11/554,646 : DECISION ON PETITION
Filed: October 31, 2006 :
Attorney Docket No. **252022-1110** :

This is a decision on the renewed petition, filed April 15, 2011, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to reply to the Notice of Non-Compliant Amendment (Notice) mailed April 5, 2010, which set a one (1) month shortened statutory period for reply. A Notice of Abandonment was mailed on January 3, 2011.

Petitioner asserts that the Notice dated April 5, 2010 was not received.

DISCUSSION OF PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

A review of the written record indicates no irregularity in the mailing of the Office action, and, in the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received.

Petitioner has made a sufficient showing that the Notice mailed on April 5, 2010, was not received. Accordingly, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

Telephone inquiries concerning this decision should be directed to JoAnne Burke at (571) 272-4584.

This application is being referred to the Technology Center Art Unit 2629 for **re-mailing** the Notice of Non-Compliant Amendment (Notice) of April 5, 2010, with the period for reply running from the mailing date thereof.

/Ramesh Krishnamurthy/
Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/554,663	10/31/2006	Mark Davis	PIP192DAVIU-US	5776

31518 7590 12/07/2010

NEIFELD IP LAW, PC
4813-B EISENHOWER AVENUE
ALEXANDRIA, VA 22304

EXAMINER	
MYHRE, JAMES W	

ART UNIT	PAPER NUMBER
3688	

NOTIFICATION DATE	DELIVERY MODE
12/07/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

general@neifeld.com
rneifeld@neifeld.com
rhahl@neifeld.com

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DEC - 6 2010

Neifield IP Law, PC
4813-B Eisenhower Avenue
Alexandria, VA 22304

In re Application of: Mark Davis	:	DECISION ON PETITION
Application No. 11/554,663	:	TO WITHDRAW
Filed: October 31, 2006	:	FINAL OFFICE ACTION
For: IMPROVED TARGETED INCENTIVES BASED UPON PREDICTED BEHAVIOR	:	UNDER 37 C.F.R. 1.181

This is in response to applicant's petition filed on July 30, 2010 to have the final Office action of July 29, 2010 withdrawn.

The petition is **DENIED.**

In review of the file it is noted that a non-final Office action was mailed on December 03, 2009 rejecting claims 1-23. Applicant responded on March 03, 2010 with amendments to the claims adding additional limitations not considered by the examiner in the first Office action. The examiner then mailed a final Office action on April 01, 2010 with a new ground of rejection necessitated by applicant's amendment to the claims. Applicant then filed a request for pre-appeal conference on July 07, 2010. After the pre-appeal conference a decision was mailed on July 28, 2010 indicating that the final rejection was improper and to reopen prosecution. The examiner then completed a new final rejection that was mailed on July 29, 2010.

MPEP section 706.07(a) states, "under present practice, second **or any subsequent actions on the merits,** shall be final, except where the examiner introduces a new grounds of rejection that is neither necessitated by applicant's amendment of the claims".

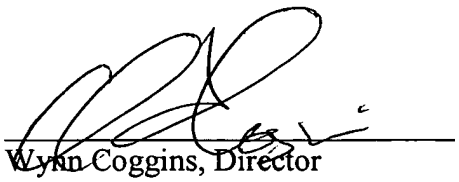
Therefore, since the amendment of the claims filed on March 03, 2010 necessitated that the examiner remove the original rejection set forth in the first office action mailed on December 03, 2009 and set forth a new grounds of rejection in the **subsequent action on the merits** mailed on July 28, 2010 that subsequent action was properly made Final.

The applicant seems to indicate in the petition that it is improper to make the next Office action final following the reopening of the prosecution after a pre-appeal request. However, in review of the OG Notices of July 12, 2005 relating to the new Pre-Appeal Brief Conference Pilot Program there is no indication that if the application is reopened for prosecution that the next Office action cannot be made final. The notice simply indicates that, "The decision will not contain any additional grounds of rejection or any restatement of previously made rejections".

Therefore, since the decision dated on July 28, 2010 does not contain any new grounds of rejection the decision was in compliance with the OG Notice.

The application will be forwarded to the examiner to consider the appeal brief filed on October 29, 2010.

Any questions related to this decision should be directed to Supervisory Patent Examiner John G Weiss at (571) 272-6812.



Wynn Coggins, Director
Patent Technology Center 3600
(571)-272-5350

jgw/lm: 12/1/10

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/554,663	10/31/2006	Mark Davis	PIP192DAVIU-US	5776

31518 7590 04/20/2011

NEIFELD IP LAW, PC
4813-B EISENHOWER AVENUE
ALEXANDRIA, VA 22304

EXAMINER	
MYHRE, JAMES W	
ART UNIT	PAPER NUMBER
3682	

NOTIFICATION DATE	DELIVERY MODE
04/20/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

general@neifeld.com
rneifeld@neifeld.com
rhahl@neifeld.com

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APR 19 2011

Neifield IP Law, PC
4813-B Eisenhower Avenue
Alexandria, VA 22304

Inventors: Mark Davis et al.	:	PETITION TO INVOKE THE
Application No. 11/554,663	:	SUPERVISORY AUTHORITY
Filed: October 31, 2006	:	OF THE COMMISSIONER
For: TARGETED INCENTIVES BASED	:	UNDER 37 C.F.R. 1.181(A)(3)
UPON PREDICTED BEHAVIOR	:	

This is in response to applicant's renewed petition filed on January 20, 2011 to have the Petition Decision of December 7, 2010, denying the request to have the finality of the final office action of July 29, 2010 withdrawn.

The petition is **GRANTED.**

Upon review of the file, it is noted that the final Office action mailed on July 29, 2010 was improperly made final in view of the current guidelines defining when it is proper to make the next Office action final. Specifically, when a rejection is changed after a pre-appeal conference it should not be made final unless necessitated by an accompanied amendment. The amendment of July 6, 2010, that accompanied the pre-appeal conference request, was only filed to correct the formal matter of improper line spacing as requested in the previous Office action. The July 6, 2010 amendment did not add any additional changes in the claim language and therefore the July 29, 2010 final Office action was not the result of the amendment filed on July 6, 2010.

Therefore, the finality of the Office action of July 29, 2010, but not the action itself, is hereby withdrawn and the action considered as a non-final Office action. The amendment filed on October 28, 2010 will be entered as a matter of right and forwarded to the examiner for consideration. Furthermore, the examiner's answer of December 27, 2010 is hereby **VACATED.**

The application will be forwarded to the examiner to consider the October 28, 2010 amendment including claims 1-28 and issue a new Office action in due course.

Any questions related to this decision should be directed to John G. Weiss at (571) 272-6812.

Summary: ***Petition is GRANTED.***

Wynn Coggins, Director
Patent Technology Center 3600
(571)-272-5350

jgw/SNM 04/11/2011

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TEXAS INSTRUMENTS INCORPORATED
P O BOX 655474, M/S 3999
DALLAS TX 75265

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SEP 21 2011
OFFICE OF PETITIONS

In re Application of	:	
Aris Papasakellariou	:	
Application No. 11/554679	:	ON PETITION
Filing or 371(c) Date: 10/31/2006	:	
Attorney Docket Number:	:	
TI-63643	:	

This is a decision on the Petition to Revive an Unintentionally Abandoned Application Under 37 C.F.R. § 1.137(b), filed August 26, 2011.

This Petition is hereby **granted**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of June 7, 2010. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is September 8, 2010.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that Applicant has filed (1) the reply in the form of a Notice of Appeal and fee; (2) the petition fee; and (3) the required statement of unintentional delay. Accordingly, the reply is accepted as having been unintentionally delayed.

The petition fee and fee for filing the Notice of Appeal have been charged to Applicant's deposit account as authorized in the petition and Notice of Appeal.

The application is being referred to Technology Center Art Unit 2617 to await the brief in support of appeal.

Applicant has two (2) months from the mailing date of this Decision to file an appeal brief. Extensions of time are available under 37 CFR 1.136(a). Accord, MPEP 1215.01

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

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MAILED

NOV 03 2010

OFFICE OF PETITIONS

In re Application of :
Khan et al. :
Application No. 11/554,686 : DECISION ON PETITION
Filed: October 31, 2006 :
Attorney Docket No. 2005.12.006.WSO :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 13, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, March 30, 2010, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on July 1, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an Amendment, (2) the petition fee of $1,620.00, and (3) a proper statement of unintentional delay.

Further, although the petition is signed by a registered patent attorney it does not set forth a USPTO registration number. Petitioner should note that all documents submitted before the United States Patent and Trademark Office by a registered patent attorney/agent must contain his/her registration number. However, the accompanying document does include the signature and registration number for John T. Mockler. Therefore, the petition is accepted as being properly signed.

Additionally, the address given on the petition differs from the address of record. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

This application is being referred to Technology Center AU 2617 for appropriate action by the Examiner in the normal course of business on the reply received.

Joan Olszewski
Petitions Examiner
Office of Petitions

cc: John T. Mockler
12770 Coit Road, Suite 600
Dallas, Texas 75251

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Paper No.

MOTOROLA SOLUTIONS, INC.
Penny Tomko
1303 EAST ALGONQUIN ROAD
IL01/3RD
SCHAUMBURG IL 60196

MAILED

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OFFICE OF PETITIONS

In re Application of :
Nasir et al. : ON PETITION
Application No. 11/554,704 :
Filed: October 31, 2006 :
Attorney Docket No. CML03293T :

This is in response to the PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b) filed December 17, 2010.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to pay the Issue Fee and Publication Fee within three months of the mailing date, July 12, 2010, of the Notice of Allowance and Fee(s) Due. This Office action set a three-month nonextendable statutory period for reply. A courtesy Notice of Abandonment was mailed on October 27, 2010.

The petition included the required reply[1] in the form of payment of the Issue Fee and Publication Fee; payment of the petition fee set forth in 37 CFR § 1.17(m); and the required statement of unintentional delay. No terminal disclaimer is required.

It is concluded that all requirements of 37 CFR 1.137(b) have been met.

[1] There was no distinct but concurrent requirement for new drawings.

The Office of Data Management has been advised of this decision. The application is, thereby, forwarded for processing into a patent.

Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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United States Patent and Trademark Office
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MOTOROLA, INC.
1303 EAST ALGONQUIN ROAD
IL01/3RD
SCHAUMBURG IL 60196

In re Application of	:	
Peter Z. Lo, et al.	:	
Application No. 11/554,720	:	DECISION ON PETITION
Filed: October 31, 2006	:	
Attorney Docket No. CM09327G	:	

This is a decision on the petition, filed July 14, 2010, which is being treated as a petition under 37 CFR 1.181 (no fee), requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely respond to the Non-Final Office action mailed December 21, 2009, which set a (3) month shortened statutory period for reply. Accordingly, a reply was due on or before March 21, 2010, or, on or before June 21, 2010, with a three (3)-month extension of time under 37 CFR 1.136.

Petitioner states that a timely reply was electronically submitted on June 21, 2010, which included the following papers: a request for three (3) month extension of time, and an amendment.

A review of the written record indicates that a reply to the Office action of December 21, 2009 was timely received at the USPTO on June 21, 2010 which included the following papers: an amendment and a request for three (3) month extension of time.

Accordingly, the holding of abandonment for failure to timely file a reply to the Non-Final Office action of December 21, 2009 is hereby withdrawn.

The application file does not indicate a change of address has been filed in this case, although the address given on the petition differs from the address of record.
A change of address should be filed in this case in accordance with MPEP 601.03.

A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

Telephone inquires regarding this decision should be directed to Terri Johnson at (571) 272-2991.

This application is being referred to the Technology Center AU 2624 for appropriate action on the amendment received June 21, 2010.

/ Ramesh Krishnamurthy/
Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

cc: **MUNCK CARTER, LLP**
Docket Clerk
P.O. Drawer 800889
Dallas, TX 75380

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PHILIP S. JOHNSON
JOHNSON & JOHNSON
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK NJ 08933-7003

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OFFICE OF PETITIONS

In re Application of
Charles G. Roberts et al.
Application No. 11/554,849
Filed: October 31, 2006
Attorney Docket No.: **ASP5042USCIPI**

ON PETITION

This is a decision on the petition filed September 24, 2010 under 37 CFR 1.137(b)[1], to revive the above-identified application.

A Restriction Requirement mailed February 4, 2009 set the longer of one month or thirty days as the period for reply. No response to the February 4, 2009 Restriction Requirement having been timely filed, the application became abandoned March 2, 2009. Accordingly, a Notice of Abandonment was mailed on October 2, 2009.

The petition fee in the amount of $1620.00 has been charged to deposit account no. 10-0750.

The response to the Restriction Requirement filed September 23, 2010 will be referred to Technology Center 1797 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

[1]Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may required additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

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DEC - 9 2010

In re Application of CHUCK FOSTER et al Serial No. 11/554,880 Filed: October 31, 2006 For: AUTOMATIC TERMINATION OF ELECTRONIC TRANSACTIONS	:	NOTICE OF WITHDRAWAL FROM ISSUE UNDER 37 CFR 1.313(b)

The purpose of this communication is to inform you that the above-identified application is being withdrawn from issue pursuant to 37 CFR 1.313.

The application is being withdrawn to permit reopening of prosecution. The reasons therefore will be communicated to you by the examiner.

PTO records reveal that the issue fee has not been paid. If the issue fee has been submitted, the applicant may request a refund or may request that the fee be credited to a deposit account. However, applicant may wait until the application is either again found allowable or held abandoned. If the application is allowed, upon receipt of a new Notice of Allowance and Issue Fee Due, applicant may request that the previously submitted issue fee be applied toward payment of the issue fee in the amount identified on the new Notice of Allowance and Issue Fee Due. If the application is abandoned, applicant may request either a refund or a credit to a deposit account.

The application is being forwarded to the examiner for action.

Wynn Coggins, Director
Technology Center 3600

Meyertons, Hood, Kivlin, Kowert & Goetzel., P.C.
P.O. Box 398
Austin, TX 78767-0398

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OFFICE OF PETITIONS

GODFREY & KAHN S.C.
780 NORTH WATER STREET
MILWAUKEE WI 53202

In re Application of :
Ruehl :
Application No. 11/554,885 : ON PETITION
Filed: October 31, 2006 :
Attorney Docket No. 072511-0005 :
For: UNIVERSAL HELPER STEP FOR CLASS 8 TRACTORS, TRAILERS AND OTHER TRUCK APPLICATIONS

This is a decision on the petition, filed March 7, 2011, under 37 CFR 1.137(b) to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to timely submit a reply within three (3) months of the mailing of the July 7, 2010 non-final Office action. No response being received and no proper extensions of time being obtained under the provisions of 37 CFR 1.136(a), this application became abandoned on October 8, 2010. A Notice of Abandonment was mailed on January 13, 2011.

Applicant has submitted an amendment in reply to the July 7, 2010 non-final Office action, an acceptable statement of the unintentional nature of the delay in responding to the July 7, 2010 non-final Office action, and the $810.00 petition fee. All of the requirements under 37 CFR 1.137(b) being met, the petition is granted.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. *See* In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the $555.00 extension of time fee submitted with the petition on March 7, 2011 was submitted subsequent to the expiration of the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

After the mailing of this decision, the application will be returned to Technology Center AU 3618 for consideration of the amendment filed on March 7, 2011.

Telephone inquiries should be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

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OFFICE OF PETITIONS

In re Patent No. 8,099,326	:	
KFOURI et al.	:	DECISION ON REQUEST FOR
Issue Date: January 17, 2012	:	RECONSIDERATION OF
Application No. 11/554,934	:	PATENT TERM ADJUSTMENT
Filed: October 31, 2006	:	
Attorney Docket No. 16113-1167001	:	
Title: TRAFFIC ESTIMATOR	:	

This is a decision on the petition filed on March 16, 2012, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand three hundred thirty-four (1,334) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **DISMISSED**.

BACKGROUND

On January 17, 2012, the above-identified application matured into U.S. Patent No. 8,099,326 with a revised patent term adjustment of 1,231 days. On March 16, 2012, patentee timely submitted this request for reconsideration of patent term adjustment (with required fee), asserting that the correct number of days of Patent Term Adjustment is 1,334. Patentee maintains that the Office incorrectly calculated Office delay

pursuant to 37 CFR 1.702(b). Patentee contends that the Office erred in subtracting from the "B delay" a period of time that was not "consumed by continued examination of the application." Specifically, Patentee argues that (after the filing of the request for continued examination) the Office mailed a Notice of Allowance on October 7, 2011, thereby closing examination of the application on that date. Thus, Patentee argues no continued examination took place during the 103-day period from October 7, 2011 (the mailing date of the Notice of Allowance) until January 17, 2012 (the date the patent was issued). As such, Patentee maintains that the "B delay" should include the 103 days and be increased from 675 to 778 days. Patentee concludes that the correct patent term adjustment is 1,334 days (the sum of 1,011 days of "A delay" and 778 days of "B delay" minus 341 days of overlap between "A delay" and "B delay" - 114 days of applicant delay).

RELEVANT STATUTE AND REGULATIONS

The statutory basis for calculation of "B delay" is 35 U.S.C. 154(b)(1)(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, which provides that:

> Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including —
>
> (i) any time consumed by continued examination of the application requested by the applicant under section 132(b);
>
> (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or
>
> (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued.

The implementing regulation, 37 CFR 1.702(b) provides that:

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including:

(1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b);

(2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a);

(3) Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181;

(4) Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or

(5) Any delay in the processing of the application by the Office that was requested by the applicant.

OPINION

Patentee's arguments have been considered, but not found persuasive. The Office calculated the period of "B delay" pursuant to 35 U.S.C. 154(b)(1)(B)(i) and 37 CFR 1.702(b)(1) as 675 days based on the application having been filed under 35 U.S.C. 111(a) on October 31, 2006, and the patent not having issued as of the day after the three year date, November 1, 2009, and a request for continued examination under 35 U.S.C. 132(b) having been filed on September 7, 2011. In other words, the 103-day period beginning on the date of mailing of the Notice of Allowance to the date of issuance of the patent was considered time consumed by continued examination of an application under 35 U.S.C. 132(b) and was not included in the "B delay."

The Office's calculation of "B delay" is correct. The "B delay" is an adjustment entered if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed. However, the adjustment does not include, among other things, any time consumed by continued examination of the application at the request of the applicant under 35 U.S.C.

132(b)[1]. Thus, with respect to calculating the "B delay", where applicant has filed a request for continued examination the period of adjustment is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the number of days in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

Further, counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentee does not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is not any time consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the

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[1] Pursuant to 35 U.S.C. 132(b), 37 CFR 1.114 provides for continued examination of an application, as follows:

(a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:

(1) Payment of the issue fee, unless a petition under § 1.313 is granted;

(2) Abandonment of the application; or

(3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

(b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56366, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

Patentee's argument that the period of time after the issuance of a Notice of Allowance on a request for continued examination is not "any time consumed by continued examination requested by the applicant under section 132(b)" within the meaning of 35 U.S.C. 154(b)(1)(B)(i) is not availing. This limitation is not supported by the statutory language. Garcia v. United States, 469 U.S. 70, 75 (1984) ("only the most extraordinary showing of contrary intentions from [legislative history] would justify a limitation on the 'plain meaning' of the statutory language"). BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning"). The statute provides for a guarantee of no more than 3-year application pendency, by providing for an adjustment in the patent term:

First, "Subject to the limitations of paragraph (2)," means that the limitations of paragraph 2 apply to this paragraph's adjustment of patent term. That is, the day-to-day extension of patent term for pendency beyond the 3 year period is restricted as follows: 1) "B delay" cannot accrue for days of "A delay" that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

Second, "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of

the United States) after the application filing date before an adjustment will accrue for "B delay."

Third, "not including- (i) any time consumed by continued examination of the application requested by the applicant under section 132(b); (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), meaning that the three-year period does not include "any time consumed by" or "any delay in processing," as specified in clauses (i)-(iii). This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, 580 F. Supp. 2d 138 (D.D.C. 2008), because the clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate this effect, the statute, *inter alia*, grants adjustments of patent term whenever the patent prosecution takes more than three years, regardless of the reason. The time consumed by prosecution of the application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. The time it takes to prosecute the application ends not with the mailing of the notice of allowance, but with the issuance of the patent.

Thus, not including "any time consumed by" means not including any days used to prosecute the application as specified in clauses (i)-(ii)[2]. Clause (i) specifies "any time consumed by

[2] Clause (iii) provides for not including (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year

continued examination of the application requested by the applicant under section 132(b)." Clause (ii) specifies "any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court." "Time" in the context of this legislation throughout refers to days. "Consumed by" means used by or used in the course of. *Websters Collegiate Dictionary*, (11th ed.). The "any" signifies that the days consumed by are "any" of the days in the pendency of the application, and not just days that occur after the application has been pending for 3 years. As such, "any time consumed by" refers to any days used in the course of 1) continued examination of the application under section 132(b)(the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, and 4) appellate review. Thus, that 3-year period given to the Office to issue a patent before an adjustment will accrue for "B delay" does not include any days used in the course of or any time consumed by clauses (i)-(ii), including any time consumed by the filing of a request for continued examination.

Fourth, "the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued" meaning that the consequence of this failure is that after "the end of that 3-year period" an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution

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period until the patent is issued. It is noted that paragraph (3)(C) allows with an adequate showing by applicant for reinstatement of no more than 3 months of the patent term reduced for applicant delay in taking in excess of three months to respond.

application (CPA) under 37 CFR 1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the law. See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in Blacklight Power, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. See BlackLight Power, Inc. v. Rogan, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously been issued for the application. See In re Drawbaugh, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures[3] permits the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See 37 CFR 1.114(a)(1).

As the examination process does not terminate with the mailing of the Notice of Allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the Notice of Allowance. All the time the application is pending from the date of filing of the request for continued examination to the mailing of the Notice of Allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that request. Applicant has gotten further prosecution of the application without having to file a continuing application under 37 CFR 1.53(b).

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[3] Thus, on occasion, even where a request for continued examination has already been filed and a notice of allowance issued pursuant to that request, applicant may file a further request for continued examination.

All of the continued examination pursuant to the filing of the request by the applicant is properly excluded from the delay attributed to the Office. 35 U.S.C. 154(b)(1)(B)'s guarantee of a total application pendency of no more than three years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

In this instance, a request for continued examination was filed on September 7, 2011, and the patent issued by virtue of that request on January 17, 2012. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on September 7, 2011, and ending on January 17, 2012, is not included in calculating Office delay.

CONCLUSION

In view thereof, it is concluded that the patent term adjustment of 1,231 days indicated on the patent is correct.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3211.

/Christina Tartera Donnell/

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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APR 10 2012

OFFICE OF PETITIONS

FISH & RICHARDSON P.C.
PO BOX 1022
MINNEAPOLIS MN 55440-1022

In re Patent No. 8,099,327	:	DECISION ON REQUEST
C. Steelberg, et al.	:	FOR
Issue Date: January 17, 2012	:	RECONSIDERATION OF
Application No. 11/554,965	:	PATENT TERM ADJUSTMENT
Filed: October 31, 2006	:	and
Atty Docket No. 16113-1168001	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on March 16, 2012, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by nine hundred and ninety-seven (997) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by **nine hundred and seven (907)days** is **GRANTED to the extent indicated herein.**

The instant petition was filed March 16, 2012. Patentees state, in pertinent part:

> Section 154(b)(1)(B)(i) of Title 35 excludes from the calculation of B Delay "any time consumed by continued examination of the application." In the present matter, a Request for Continued Examination was filed on November 8, 2010. The Director erred in the calculation of the patent term adjustment by subtracting from B Delay a period of time that was not "consumed by continued examination of the application." The PTO mailed a Notice of Allowance on October 19, 2011, thereby closing examination of the application on that date. Thus, no continued examination took place during 91 day period from October 19, 2011 (the mailing date of the Notice of Allowance) until

> January 17, 2012 (the date the patent was issued). Accordingly, 91 days of "B Delay" should have been included in addition to the 372 days accorded by the Director, for a total "B Delay" of 463 days.

Excerpt taken from "Application for Patent Term Adjustment under 37 CFR 1.705(d)", filed March 16, 2012, pg.3.

The Office's calculation of "B delay" is correct. The "B delay" is an adjustment entered if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed. However, the adjustment does not include, among other things, any time consumed by continued examination of the application at the request of the applicant under 35 U.S.C. 132(b)[1]. So, with respect to calculating the "B delay" where applicant has filed a request for continued examination, the period of adjustment is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the number of days in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

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[1] Pursuant to 35 U.S.C. 132(b), 37 CFR 1.114 provides for continued examination of an application, as follows:

(a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:

(1) Payment of the issue fee, unless a petition under § 1.313 is granted;

(2) Abandonment of the application; or

(3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

(b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

Further, counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentee does not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is not any time consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56366, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

Patentee's argument that the period of time after the issuance of a notice of allowance on a request for continued examination is not "any time consumed by continued examination requested by the applicant under section 132(b)" within the meaning of 35 U.S.C. 154(b)(1)(B)(i) is not availing. This limitation is not supported by the statutory language. Garcia v. United States, 469 U.S. 70, 75 (1984) ("only the most extraordinary showing of contrary intentions from [legislative history] would justify a limitation on the 'plain meaning' of the statutory language"). BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning"). The statute provides for a guarantee of no more than 3-year application pendency, by providing for an adjustment in the patent term:

First, "Subject to the limitations of paragraph (2)," means that the limitations of paragraph 2 apply to this paragraph's adjustment of patent term. That is, the day-to-day extension of

patent term for pendency beyond the 3 year period is restricted as follows: 1) "B delay" cannot accrue for days of "A delay" that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

Second, "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of the United States) after the application filing date before an adjustment will accrue for "B delay."

Third, "not including- (i) any time consumed by continued examination of the application requested by the applicant under section 132(b); (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), meaning that the three-year period does not include "any time consumed by" or "any delay in processing," as specified in clauses (i)-(iii). This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, 580 F. Supp.2d 138(D.D.C., September 30, 2008), because the clock for calculating the 20-year patent term begins to run on the filing

date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate this effect, the statute, *inter alia*, grants adjustments of patent term whenever the patent prosecution takes more than three years, regardless of the reason. The time consumed by prosecution of the application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. The time it takes to prosecute the application ends not with the mailing of the notice of allowance, but with the issuance of the patent.

Thus, not including "any time consumed by" means not including any days used to prosecute the application as specified in clauses (i)-(ii)[2]. Clause (i) specifies "any time consumed by continued examination of the application requested by the applicant under section 132(b)." Clause (ii) specifies "any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court." "Time" in the context of this legislation throughout refers to days. "Consumed by" means used by or used in the course of. *Websters Collegiate Dictionary*, (11th ed.). The "any" signifies that the days consumed by are "any" of the days in the pendency of the application, and not just days that occur after the application has been pending for 3 years. As such, "any time consumed by" refers to any days used in the course of 1) continued examination of the application under section 132(b)(the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, and 4) appellate review. Thus, that 3-year period given to the Office to issue a patent before an adjustment will accrue for "B delay" does not include any days used in the course of or any time consumed by clauses (i)-(ii), including any time consumed by the filing of a request for continued examination.

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[2] Clause (iii) provides for not including (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued. It is noted that paragraph (3)(C) allows with an adequate showing by applicant for reinstatement of no more than 3 months of the patent term reduced for applicant delay in taking in excess of three months to respond.

Fourth, "the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued" meaning that the consequence of this failure is that after "the end of that 3-year period" an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the law. See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director

shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in Blacklight Power, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. See BlackLight Power, Inc. v. Rogan, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously been issued for the application. See In re Drawbaugh, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures[3]

[3] Thus, on occasion, even where a request for continued examination has already been filed and a notice of allowance issued pursuant to that request, applicant may file a further request for continued examination.

permit the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See 37 CFR 1.114(a)(1).

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the notice of allowance. All the time the application is pending from the date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that request. Applicant has gotten further prosecution of the application without having to file a continuing application under 37 CFR 1.53(b).

All of the continued examination pursuant to the filing of the request by the applicant is properly excluded from the delay attributed to the Office. 35 U.S.C. 154(b)(1)(B)'s guarantee of a total application pendency of no more than three years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

In this instance, a request for continued examination was filed on November 8, 2010, and the patent issued by virtue of that request on January 17, 2012. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on November 8, 2010, and ending on January 17, 2012, is not included in calculating Office delay.

Patentees' assert that a reduction to the patent term adjustment under 37 CFR 1.704(b) of 59 days is warranted for the filing of a response to a Notice of File Missing Parts of Non-provisional Application on May 3, 2007, three months and 59 days after the notice was mailed. Patentees' argument is well-taken. **A**

reduction to the patent term adjustment of 59 days will be entered accordingly.

Patentees' further assert that a reduction to the patent term adjustment under 37 CFR 1.704(c)(8) of 280 days is warranted for the filing of an Information Disclosure Statement on August 15, 2011, after a response was filed on November 8, 2010. Patentees' argument is well taken. **A reduction to the patent term adjustment of 280 days will be entered accordingly.**

Patentees dispute the period of reduction of 23 days entered for applicant delay, pursuant to 35 U.S.C. § 154(b)(2)(C) and 37 CFR 1.704(b). It is determined that entry of a reduction for this reply timely filed pursuant to 35 U.S.C. §21(b) is not warranted. **Accordingly, the period of reduction of 23 days is being removed, and a reduction of 21 days is being entered.**

Accordingly, the revised patent term adjustment is 907 days (992 days "A" delay + 372 days "B" delay - 0 days of overlap - 360 days of applicant delay.)

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days,** whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **nine hundred and seven (907)** days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 8,099,327 B2

DATED : Jan. 17, 2012

INVENTOR(S) : Steelberg et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (1244) days

Delete the phrase "by 1244 days" and insert – by 907 days--

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SAN FRANCISCO CA 94111-3834

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SEP 27 2010

OFFICE OF PETITIONS

In re Application of :
Mohammad R. Moradi et al. :
Application No. 11/554,981 : DECISION ON PETITION
Filed: October 31, 2006 : TO WITHDRAW
Attorney Docket No. **025950-000310US** : FROM RECORD
:

This is a decision on the Request to Withdraw as attorney or agent of record under 37 CFR § 1.36(b), filed September 1, 2010.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. The Office requires the practitioner(s) requesting withdrawal to certify that he, she, or they have: (1) given reasonable notice to the client, prior to the expiration of the response period, that the practitioner(s) intends to withdraw from employment; (2) delivered to the client or a duly authorized representative of the client all papers and property (including funds) to which the client is entitled; and (3) notified the client of any responses that may be due and the time frame within which the client must respond , pursuant to 37 CFR 10.40.

The request was signed by Barmak Sani on behalf of all attorneys of record who are associated with Customer Number 20350.

All attorneys/agents associated with Customer Number 20350 have been withdrawn.

Applicant is reminded that there is no attorney of record at this time.

All future correspondence will be directed to the assignee Mediaphy Corporation at the address list listed in the request.

There is no outstanding Office action that requires a reply from the applicant.

Telephone inquiries concerning this decision should be directed to the undersigned at 571-272-4584.

/JoAnne Burke/
JoAnne Burke
Petitions Examiner
Office of Petitions

cc: MEDIAPHY CORPORATION
2393 QUME DRIVE
SAN JOSE, CA 95131

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/554,981	10/31/2006	Mohammad R. Moradi	025950-000310US

CONFIRMATION NO. 6243

POWER OF ATTORNEY NOTICE

20350
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SAN FRANCISCO, CA 94111-3834

Date Mailed: 09/27/2010

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 09/01/2010.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

/jlburke/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

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JAN 14 2011

OFFICE OF PETITIONS

In re Application of :
Andrew L. Van Brocklin et al. :
Application No. 11/555,184 : DECISION ON PETITION
Filed: October 31, 2006 :
Attorney Docket No. **200505863-1** :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 14, 2010, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before October 12, 2010, as required by the Notice of Allowance and Fee(s) Due, mailed July 12, 2010. Accordingly, the date of abandonment of this application is October 13, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1,510 and the publication fee of $300, (2) the petition fee of $1,620; and (3) a proper statement of unintentional delay.

There is no indication that the person signing the petition was ever given a power of attorney to prosecute the application. If the person signing the petition desires to be acknowledged as the attorney of record regarding this application, the appropriate power of attorney document must be submitted.

Telephone inquiries concerning this decision should be directed to JoAnne Burke at (571) 272-4584.

This application is being referred to the Office of Data Management for processing into a patent.

JoAnne Burke
Petitions Examiner
Office of Petitions

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CYI Strategies
Angela Burth
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Norfolk VA 23517

MAILED
JUN 14 2011
OFFICE OF PETITIONS

In re Application of :
Angela Joyce BURTH :
Application No. 11/555,239 : ON PETITION
Filed: October 31, 2006 :
Attorney Docket No. :

This is in response to the communication, filed December 17, 2010, to revive the above-identified application, which is being treated as a petition to withdraw the holding of abandonment.

The petition is **DISMISSED**.

Any request for reconsideration of this decision should be submitted within two (2) months from the mail date of this decision and be entitled "Renewed Petition to Withdraw the Holding of Abandonment under 37 CFR 1.181." *See* 37 CFR 1.181(f).

On May 12, 2010, the Office mailed a Requirement for Restriction/Election Office action (office action), which set a one (1) month shortened statutory period to reply. The application became abandoned on June 13, 2010, for failure to submit a timely response to the Requirement for Restriction/Election Office action. On December 17, 2010, the Office mailed a Notice of Abandonment.

In the present petition, petitioner requests that the Office withdraw the holding of abandonment due to untimely receipt of the Requirement for Restriction/Election Office action. Specifically, petitioner states that the CYI Strategies entity addressed on the office action mailed May 12th, 2010 was not recognized by military mail distribution in Germany, and returned to the USPTO on May 24, 2010. Petitioner asserts that a subsequent correspondence from the USPTO was sent to petitioner while petitioner was in the process of relocating from Germany to Norfolk, VA, and was not received until October 1, 2010. As a result, the reply to the USPTO office action was filed November 8, 2010.

DISCUSSION OF PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

A review of the record indicates no irregularity in the mailing of the office action, and in the absence of any irregularity in the mailing, there is a strong presumption that the office action was properly mailed to the address of record, evidenced by petitioners statement that the CYI Strategies entity addressed on the office action was not recognized by military mail distribution, not the address itself, and petitioners eventual receipt of the office action.

In addition, a review of the record indicates petitioner submitted a reply, filed November 8, 2010, however no extensions of time under the provisions of 37 CFR 1.136(a) were obtained, and as a result, the response was not entered. As a result, the Requirement for Restriction/Election Office action, mailed May 12, 2010, which set a one (1) month shortened statutory period to reply, became abandoned on June 13, 2010.

Therefore, the petition to withdraw the holding of abandonment is **dismissed**.

ALTERNATIVE VENUE

Petitioner is strongly encouraged to consider filing a petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application instead of filing a renewed petition under 37 CFR 1.181 or a petition under 37 CFR 1.137(a).

A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

> (1) The reply required to the outstanding Office action or notice, unless previously filed. In nonprovisional utility application abandoned for failure to respond to a non-final Office action, the required reply may be met by filing either (A) an argument or amendment under 37 CFR 1.111 or (B) a continuing application under 37 CFR 1.53(b).
>
> (2) The petition fee as set forth in 37 CFR 1.17(m), **$810.00 for a small entity**;
>
> (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

A form for filing a petition to revive an unintentionally abandoned application accompanies this decision for petitioner's convenience. If petitioner desires to file a petition under 37 CFR 1.137(b) instead of filing a request for reconsideration, petitioner must complete the enclosed petition form (PTO/SB/64) and pay the $810.00 petition fee.

Petitioner may wish to consider hiring a registered patent attorney or agent to assist in the prosecution of this application. Additionally, petitioner is encouraged to contact the Inventors Assistance Center (IAC) by telephone at 800-786-9199 or 571-272-1000, Monday through Friday from 8:30 AM to 5:30 PM (EST). The IAC provides patent information and services to the public and is staffed by former Supervisory Patent Examiners and experienced Primary Examiners who answer general questions concerning patent examining policy and procedure.

Further correspondence with respect to this matter should be addressed as follows:

By mail:	Mail Stop Petition Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450
By FAX:	(571) 273-8300 Attn: Office of Petitions
By hand:	Customer Service Window Randolph Building 401 Dulany Street Alexandria, VA 22314

Telephone inquiries concerning this decision should be directed to Andre Boyce at (571) 272-6726, or in his absence, the undersigned at (571) 272-7099.

David A. Bucci
Petitions Examiner
Office of Petitions

Enclosures: Petition For Revival Of An Application For Patent Abandoned Unintentionally Under 37 CFR 1.137(b); Form PTO/SB/64, Privacy Act Statement.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MEDTRONIC
ATTN: NOREEN C. JOHNSON, IP LEGAL DEPARTMENT
2600 SOFAMOR DANEK DRIVE
MEMPHIS TN 38132

MAILED
JAN 26 2011
OFFICE OF PETITIONS

In re Application of	:	
Parimore et al.	:	
Application No. 11/555,339	:	DECISION ON PETITION
Filed: November 1, 2006	:	
Attorney Docket No. 31132.580 / P0026427.00	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 11, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, June 11, 2010, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on September 12, 2010. A Notice of Abandonment was mailed December 20, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an Amendment, (2) the petition fee of $1,620.00, and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

This application is being referred to Technology Center AU 3733 for appropriate action by the Examiner in the normal course of business on the reply received.

Joan Olszewski
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Sadler, Breen, Morasch & Colby, ps
601 W. Main Ave.
Suite 1300
Spokane WA 99201

MAILED
OCT 07 2010
OFFICE OF PETITIONS

In re Application of :
Miral Kim-E :
Application No. 11/555,549 : ON APPLICATION FOR
Filed: November 1, 2006 : PATENT TERM ADJUSTMENT
Atty Docket No. SFPM0004

This is in response to the "PETITION FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT", filed August 27, 2010, which is properly treated under 37 C.F.R. § 1.705(b). Applicants submit that the patent term adjustment to be indicated on the patent is one hundred and forty-five (145) days, not zero (0) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request this correction solely on the basis that the Office will take in excess of three years to issue this patent.

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee[1].

It is noted that any period of adjustment will be entered in light of 35 U.S.C. 154(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, which provides that:

> Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including –

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[1] For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

(i) any time consumed by continued examination of the application requested by the applicant under section 132(b);

It is further noted that a Request for Continued Examination (RCE) was filed in this application on March 26, 2010.

The Office is in receipt of the 200.00 for the fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to the undersigned (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

INCEPTIA LLC
1652 48TH STREET
BROOKLYN NY 11204

MAILED

MAY 23 2011

OFFICE OF PETITIONS

In re Application of :
Tracey Bernath :
Application No. 11/555,595 : DECISION ON PETITION
Filed: November 01, 2006 :
Attorney Docket No. **332.007** :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 12, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, January 07, 2010, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on April 08, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $810, and (3) an adequate statement of unintentional delay. Accordingly, the reply to the non-final Office action of January 07, 2010 is accepted as being unintentionally delayed.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

Telephone inquiries concerning this decision should be directed to Tredelle Jackson at (571) 272-2783.

This application is being referred to Technology Center AU 2476 for appropriate action on the concurrently filed amendment.

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MAILED
MAR 16 2012
OFFICE OF PETITIONS

GLENN PATENT GROUP
3475 EDISON WAY, SUITE L
MENLO PARK CA 94025

In re Patent No. 7,403,029 :
Issue Date: July 22, 2008 :
Application No. 11/555,603 : NOTICE
Filed: November 1, 2006 :
Attorney Docket No. NNEX0030C :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed March 1, 2012. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby accepted. The petition is **GRANTED**.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

This file is being forwarded to Files Repository.

Telephone inquiries related to this decision should be directed to the Kimberly Inabinet at (571) 272-4618.

/Kimberly Inabinet/
Kimberly Inabinet
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

PERRY + CURRIER INC.
(FOR RIM)
1300 YONGE STREET
SUITE 500
TORONTO ON M4T-1X3 CA CANADA

MAILED

FEB 22 2011

OFFICE OF PETITIONS

In re Application of	:	
Barry Linkert et al	:	
Application No. 11/555,722	:	DECISION GRANTING PETITION
Filed: November 2, 2006	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. P2281US01	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed February 18, 2011, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). *See* 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on January 24, 2011 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (571) 272-3208.

This application is being referred to Technology Center AU 2617 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed IDS.

/Karen Creasy/
Karen Creasy
Petitions Examiner
Office of Petitions

[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form* ***must*** *be completed and timely submitted to avoid abandonment of the application.*

Second Request

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: ——

DATE : 11/16/10

TO SPE OF : ART UNIT 2831

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/555740 Patent No.: 7795877B2

CofC mailroom date: 11/2/2010

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Virginia Tolbert
Certificates of Correction Branch
571-272-0460

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- [x] **Approved** — **All** changes apply.
- [ ] **Approved in Part** — Specify below which changes **do not** apply.
- [ ] **Denied** — State the reasons for denial below.

Comments: _____

Melissa J. Koval — **SPE**

2858 — **Art Unit**

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20110215

DATE : February 16, 2011

TO SPE OF : ART UNIT 1761

SUBJECT : Request for Certificate of Correction on Patent No.: 7,465,697

A response is requested with respect to the accompanying request for a certificate of correction.

Please complete this form and return with file, within **7** days to:
Certificates of Correction Branch – ST (South Tower) 9A22
Palm location **7590** - Tel. No. (703) 305-8309

With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Thank You For Your Assistance **Certificates of Correction Branch**

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

☒ **Approved** **All** changes apply.

☐ **Approved in Part** Specify below which changes **do not** apply.

☐ **Denied** State the reasons for denial below.

Comments:

SPE: Harold Y. Pyon **Art Unit** 1761

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

CHIEN-HUI SU
P. O. BOX 70-121 TAICHUNG
TAICHUNG CITY 40899 TW TAIWAN

MAILED

OCT 25 2010

OFFICE OF PETITIONS

In re Application of :
Scott Wang :
Application No. 11/556,036 : ON PETITION
Filed: November 2, 2006 :
Attorney Docket No. GFP-996647 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 4, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to file a reply in a timely manner to the Notice to File Missing Parts of Nonprovisional Application (Notice), mailed February 4, 2008. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on April 5, 2008. A Notice of Abandonment was mailed October 2, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a declaration, statutory basic filing fee, search fee, examination fee and surcharge of $65, (2) the petition fee of $810, and (3) a proper statement of unintentional delay.

This application file is being referred to the Office of Patent Application Processing (OPAP) for further pre-examination processing.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6059. Telephone inquiries related to OPAP processing should be directed to their hotline at (271) 272-4000

Alicia Kelley
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 5/17/2010

TO SPE OF : ART UNIT 3611 Morris, Lesley (Spe)

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/556046 Patent No.: 7665555

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D40-A
Palm Location 7580

Certificates of Correction Branch
703-756-1571 _____

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☒ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: APPROVED

/PAUL N. DICKSON/ — SPE

3611 — Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450

Marsh, Fischmann & Breyfogle LLP
8055 East Tufts Avenue
Suite 450
Denver, Colorado 80237

MAILED

FEB 24 2011

OFFICE OF PETITIONS

In re Application of :
Rod COPE et al. : DECISION GRANTING PETITION
Application No. 11/556,094 : UNDER 37 CFR 1.137(b)
Filed: 2 November 2006 :
Atty. Docket No.: 50146-00019 :

This is a decision on the petition under 37 CFR 1.137(b), filed 4 January 2011, to revive the above-identified application ("Application").

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mailing date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)". This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The Application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Nonprovisional Application mailed 6 December 2006 ("Notice"), which set a shortened statutory reply period of two (2) months. No extension of time under the provisions of 37 CFR 1.136(a) was obtained. The application thus became abandoned on 7 February 2007, with notification mailed 20 May 2008.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a Statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). The present petition lacks item (1).

As set forth in the Notice mailed 6 December 2006, an oath or declaration was missing. There was no oath or declaration submitted with the present petition, therefore the reply is incomplete, and the petition not grantable.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. *See*, In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the $1730.00 extension of time fee submitted with the petition on 4 January 2011 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to the petitioner's deposit account.

Further correspondence with respect to this matter should be addressed as follows:

By Mail:
Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

By hand:
U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

The centralized facsimile number is **(571) 273-8300.**

General inquiries relating to this decision should be directed to Robert DeWitty (571-272-6051).

David Bucci
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450

MAILED

APR 15 2011

OFFICE OF PETITIONS

Marsh, Fischmann & Breyfogle LLP
8055 East Tufts Avenue
Suite 450
Denver, Colorado 80237

In re Application of	:	
Rod COPE et al.	:	DECISION GRANTING PETITION
Application No. 11/556,094	:	UNDER 37 CFR 1.137(b)
Filed: 2 November 2006	:	
Atty. Docket No.: 50146-00019	:	

This is a decision on the renewed petition under 37 CFR 1.137(b), filed March 14, 2011, to revive the above-identified application.

The petition is **GRANTED.**

The Application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Nonprovisional Application mailed 6 December 2006 ("Notice"), which set a shortened statutory reply period of two (2) months. No extension of time under the provisions of 37 CFR 1.136(a) was obtained. The application thus became abandoned on 7 February 2007, with notification mailed 20 May 2008.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a Statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d).

The present petition satisfies the requirements under 37 CFR 1.137(b) by including (1) an appropriate reply to the Notice to File Missing Parts, (2) the petition fee of $1620, and (3) a statement of unintentional delay. The reply to the Notice is accepted as having been unintentionally delayed.

Telephone inquiries relating to this decision should be directed to Robert DeWitty, Petitions Examiner, Office of Petitions (571-272-8427).

The application file will be referred to the Office of Patent Application Processing for further processing of the application.

Ramesh Krishnamurthy

for David Bucci
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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PEPPER HAMILTON LLP
400 BERWYN PARK
899 CASSATT ROAD
BERWYN, PA 19312-1183

MAILED
OCT 05 2010
OFFICE OF PETITIONS

Applicant: Anderson, et al.
Appl. No.: 11/556,208
Filing Date: November 3, 2006
Title: Diagnostic And Treapeutic Epitope, And Transgenic Plant
Attorney Docket: 133089.00821(142769US02)
Pub. No.: US 2009/0269285 A1
Pub. Date: October 29, 2009

This is a decision on the request for a corrected patent application publication under 37 CFR 1.221(b), received on December 28, 2009 for the above-identified application.

The request is DISMISSED.

Applicant requests that the application be republished because the patent application publication contains material errors in claim 67 wherein "161" should be "l61" and in claim 84 wherein "pQPELPY" should be "PQPELPY".

37 CFR 1.221 (b) is applicable "only when the Office makes a material mistake which is apparent from Office records.... Any request for a corrected publication or revised patent application publication other than provided as provided in paragraph (a) of this section must be filed within two months from the date of the patent application publication. This period is not extendable." A material mistake must affect the public's ability to appreciate the technical disclosure of the patent application publication, to determine the scope of the patent application publication, or to determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent. [1]

The errors noted by requestor with respect the claims may be Office errors, but they are not material Office errors under 37 CFR .1221(b). With respect to claim 67, the error is not a material Office error as the error is due to the quality of the text. With regards to the error in claim 84 wherein "pQPELPY" should have been printed as "PQPELPY", it is printed correctly in several instances with the application. It does not affect the public's ability to appreciate the technical disclosure of the patent application publication, to determine the scope of the patent application publication, or to determine the scope of the provisional rights that an applicant may

[1] Changes to Implement Eighteen-Month Publication of Patent Applications, 65 FR 57023, 57038 (Sept. 20, 2000), 1239, Off. Gaz. Pat. Office Notices 63, 75 (Oct. 10, 2000) (final rule).

seek to enforce upon issuance of a patent. Therefore, the instant request does not identify a material mistake in the publication made by the Office under 37 CFR 1.221(b).

Applicant is advised that he may want to file application papers that are clearer, as the errors are due to the quality of the text. Applicants have been advised to file applications having cleaner and larger text with sufficient clarity and contrast to permit reproduction, such as electronic reproduction by digital imaging and optical character recognition, which will avoid errors in the patent application publication process. See 37 CFR 1.52 and PCT Rule 11.9(d).

The applicant is advised that a "request for republication of an application previously published" may be filed under 37 CFR 1.221 (a). Such a request for republication "must include a copy of the application compliance with the Office's electronic filing system requirements and be accompanied by the publication fee set forth in § 1.18 (d) and the processing fee set forth in § 1.17 (i)." If the request for republication does not comply with the electronic filing system requirements, the republication will not take place and the publication fee set forth in § 1.18 (d) will be refunded. The processing fee will be retained.

A guide for filing a request for a Pre-Grant Publication, such as a request for republication, may be found on the link below:

http://www.uspto.gov/patents/process/file/efs/guidance/index.jsp

OR

http://www.uspto.gov/ebc/portal/efs/pgpub_quickstart.pdf

Any request for republication under 37 CFR 1.221(a), must be submitted via the EFS system, as a "Pre-Grant Publication".

Inquiries relating to this matter may be directed to Mark Polutta at (571) 272-7709.

Mark Polutta
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

RAMIREZ & SMITH
PO BOX 341179
AUSTIN, TX 78734

MAILED

JUN 02 2011

OFFICE OF PETITIONS

In re Application of :
Curtis et al. :
Application No. 11/556,390 : DECISION ON PETITION
Filed: November 3, 2006 :
Attorney Docket No. GE.0097 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 20, 2011, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fee(s) on or before March 28, 2011, as required by the Notice of Allowance and Fee(s) Due mailed December 28, 2010. Accordingly, the application became abandoned on March 29, 2011. A Notice of Abandonment was mailed April 14, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1,510 and the publication fee of $300, (2) the petition fee of $1,620, and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6059.

This application is being referred to the Office of Data Management for processing into a patent.

Alicia Kelley-Collier
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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COZEN O'CONNOR
277 PARK AVENUE
20th Floor
NEW YORK NY 10172

MAILED
MAR 25 2011
OFFICE OF PETITIONS

In re Application of :
Kent Chen :
Application No. 11/556,438 : DECISION ON PETITION
Filed: November 03, 2006 :
Attorney Docket No. **20946/0205607-US0** :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 17, 2010 and resubmitted on November 18, 2010, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before June 09, 2010, as required by the Notice of Allowance and Fee(s) Due, mailed March 09, 2010. Accordingly, the date of abandonment of this application is June 10, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $755 and the publication fee of $300, (2) the petition fee of $810; and (3) a proper statement of unintentional delay. Accordingly, the Issue Fee is accepted as having been unintentionally delayed.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

The Power of Attorney filed November 16, 2010 is accepted and has been made of record.

Telephone inquiries concerning this decision should be directed to Tredelle Jackson at (571) 272-2783.

This application is being referred to the Office of Data Management for processing into a patent.

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

LEWIS AND ROCA LLP
1663 Hwy 395, Suite 201
Minden NV 89423

MAILED
SEP 16 2011
OFFICE OF PETITIONS

In re Patent No. 7,931,224 :
Issue Date: April 26, 2011 :
Application No. 11/556,438 : NOTICE
Filed: November 3, 2006 :
Attorney Docket No. **20946/0205607-USO** :

This is a notice regarding your request filed April 21, 2011, for acceptance of a fee deficiency submission under 37 CFR 1.28.

There is no indication that the petition is signed by a registered patent attorney or patent agent of record. However, in accordance with 37 CFR 1.34, the signature of John O'Rourke appearing on the correspondence shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party in whose behalf he acts. If, John O'Rourke desires to receive correspondence regarding this file, the appropriate power of attorney documents must be submitted. A courtesy copy of this decision is being mailed to John O'Rourke, the petitioner herein. However, until otherwise instructed, all future correspondence regarding this application file will be directed solely to the above-noted correspondence address of record.

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **NOT ACCEPTED**.

Petitioner only provided the calculation of the deficiency owed. A request for acceptance of a fee deficiency submission under 37 CFR 1.28 petitioner is required to provide an itemization of the deficiency payment. Petitioner's attention is directed to 37 CFR 1.28(c)(2) (ii) which states:

> (2) *Payment of deficiency owed.* The deficiency owed, resulting from the previous erroneous payment of small entity fees, must be paid.

(ii) *Itemization of the deficiency payment.* An itemization of the total deficiency payment is required. The itemization must include the following information:

(A) Each particular type of fee that was erroneously paid as a small entity, (*e.g.*, basic statutory filing fee, two-month extension of time fee) along with the current fee amount for a non-small entity;

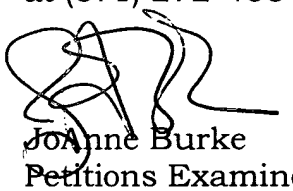
(B) The small entity fee actually paid, and when. This will permit the Office to differentiate, for example, between two one-month extension of time fees erroneously paid as a small entity but on different dates;

(C) The deficiency owed amount (for each fee erroneously paid); and

(D) The total deficiency payment owed, which is the sum or total of the individual deficiency owed amounts set forth in paragraph (c)(2)(ii)(C) of this section.

Accordingly, the request cannot be accepted at this time until petitioner provides the itemization of the deficiency payment.

Inquiries related to this communication should be directed to the undersigned at (571) 272-4584.



JoAnne Burke
Petitions Examiner
Office of Petitions

cc: Wang, Hartmann, Gibbs & Cauley, P.L.C.
1301 Dove Street
Suite 1050
Newport Beach, CA 92660

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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WANG, HARTMANN & GIBBS
1301 DOVE STREET
SUITE 1050
NEWPORT BEACH CA 92660

MAILED
OCT 11 2011
OFFICE OF PETITIONS

In re Application of :
Kent Chen :
Application No. 11/556,438 : NOTICE
Filed: November 3, 2006 :
Attorney Docket No. **A027-8120-US** :

This is a notice regarding your request filed September 29, 2011, for acceptance of a fee deficiency submission under 37 CFR 1.28.

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-4584.

JoAnne Burke
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/556,438	11/03/2006	Kent Chen	20946/0205607-US0

CONFIRMATION NO. 8676

54604
WANG, HARTMANN & GIBBS
1301 DOVE STREET
SUITE 1050
NEWPORT BEACH, CA 92660

POA ACCEPTANCE LETTER

OC000000050266199

Date Mailed: 10/07/2011

NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 09/29/2011.

The Power of Attorney in this application is accepted. Correspondence in this application will be mailed to the above address as provided by 37 CFR 1.33.

/tdjackson/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/556,438	11/03/2006	Kent Chen	20946/0205607-US0

CONFIRMATION NO. 8676

54042
Cozen O'Connor
277 PARK AVENUE
20th Floor
NEW YORK, NY 10172

POWER OF ATTORNEY NOTICE

OC000000050266192

Date Mailed: 10/07/2011

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 09/29/2011.

- The Power of Attorney to you in this application has been revoked by the assignee who has intervened as provided by 37 CFR 3.71. Future correspondence will be mailed to the new address of record(37 CFR 1.33).

/tdjackson/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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MAILED

JAN 17 2012

OFFICE OF PETITIONS

MYERS BIGEL SIBLEY & SAJOVEC, P.A.
P.O. BOX 37428
RALEIGH NC 27627

In re Patent No. 7,598,567
Issued: October 6, 2009
Application No. 11/556,448
Filed: November 3, 2006
Atty. Dkt. No. 5308-731

DECISION ON PETITION

This is a decision on the petition, filed, December 20, 2011, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the assignee's name and residence on the Letters Patent by way of a certificate of correction in the above-identified patent.

The request is GRANTED.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3205. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

The Certificates of Correction Branch will be notified of this decision granting the petition under 37 CFR 3.81(b) and directing issuance of the requested Certificate of Correction.

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

[1] See, MPEP 1309, subsection II; and Official Gazette of June 22, 2004.

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/556,512	11/03/2006	John E. Lafleche	105009.61098CP	8815

7590 01/28/2011

CROWELL & MORING LLP
INTELLECTUAL PROPERTY GROUP
P.O. BOX 14300
WASHINGTON, DC 20044-4300

EXAMINER	
SHAH, MANISH S	

ART UNIT	PAPER NUMBER
2853	

MAIL DATE	DELIVERY MODE
01/28/2011	PAPER

ACKNOWLEDGEMENT OF REQUEST

Notice of Allowance/Allowability Mailed

The request to print a color drawing reference as the first paragraph in the portion of the specification containing a brief description of the drawings as required by 37 CFR 1.84 and MPEP § 608.02 has been received by the United States Patent and Trademark Office and will be entered into the specification.

571-272-4200 or 1-888-786-0101
Application Assistance Unit
Office of Data Management

FORM PTOM327-5 (Rev. 02/08)

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

January 28, 2011

CROWELL & MORING LLP
INTELLECTUAL PROPERTY GROUP
P.O. BOX 14300
WASHINGTON DC 20044-4300

In re Application of	:	
John E. Lafleche et al.	:	**DECISION ON PETITION**
Application No. 11556512	:	
Filed: 11/3/2006	:	***ACCEPTANCE OF COLOR***
Attorney Docket No. 105009.61098CP	:	***DRAWINGS***

This is a decision on the Petition to Accept Color Drawings under 37 C.F.R 1.84 (a) (2), received in the United States Patent and Trademark Office (USPTO) November 3, 2006.

The petition is **GRANTED**.

A grantable petition under 37 C.F.R. 1.84(a) (2) must be accompanied by the following.

1. The fee set forth under 37 C.F.R. 1.17(h),
2. Three (3) sets of the color drawings in question, or (1) set if filed via EFS, and
3. The specification contains appropriate language referring to the color drawings as the first paragraph in that portion of the specification relating to the brief description of the drawings.

The petition was accompanied by all of the required fees and drawings. The specification contains the appropriate language. Therefore, the petition is GRANTED.

Telephone inquires relating to this decision may be directed to the undersigned in the Office of Data Management at 571-272-4200.

/Don Fairchild/
Office of Data Management
Publications Branch

UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, VA 22313-1450
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THEODORE J. BIELEN JR.
BIELEN, LAMPE, & THOEMING
1390 WILLOW PASS ROAD
SUITE 1020
CONCORD CA 94520

MAILED
MAR 15 2011
OFFICE OF PETITIONS

In re Application of :
Wilhelmina Evelien Ruiter et al. :
Application No. 11/556,537 : DECISION ON PETITION
Filed: November 3, 2006 :
Attorney Docket No. **15699** :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 4, 2011, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned as a result of petitioner's failure to file an appeal brief (and fee required by 37 CFR 41.20(b)(2)) within the time period provided in 37 CFR 41.37(a)(1). As an appeal brief (and appeal brief fee) was not filed within two (2) months of the Notice of Appeal filed December 2, 2009, and no extensions of time under the provisions of 37 CFR 1.136(a) were obtained, the appeal was dismissed and the proceedings as to the rejected claims were terminated. See 37 CFR 1.197(b). As no claim was allowed, the application became abandoned on February 3, 2010. *See* MPEP 1215.04.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $405, and the submission required by 37 CFR 1.114; (2) the petition fee of $810; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-4584.

This application is being referred to Technology Center AU 1761 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

JoAnne Burke
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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AT&T LEGAL DEPARTMENT - DY
ATTN: PATENT DOCKETING
ROOM 2A-207
ONE AT&T WAY
BEDMINSTER, NJ 07921

MAILED
JUL 22 2011
OFFICE OF PETITIONS

In re Application of
James D. Keeler, et al.
Application No. 11/556,624
Filed: November 3, 2006
Attorney Docket No.: WP.08001US3

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b) to revive the above-identified application, filed June 22, 2011.

The petition is **GRANTED**.

The application became abandoned for failure to timely pay the issue and publication fees on or before May 18, 2011, as required by the Notice of Allowance and Fee(s) Due, mailed February 18, 2011, which set a statutory period for reply of three (3) months. Accordingly, the application became abandoned on May 19, 2011. A Notice of Abandonment was subsequently mailed on June 3, 2011. On June 22, 2011, the present petition was filed.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of the $1,510 issue fee and $300 publication fee; (2) the petition fee of $1,620; and (3) an adequate statement of unintentional delay.

The application is being referred to the Office of Data Management to be processed into a patent.

Telephone inquires related to this decision should be directed to the undersigned at (571) 272-3204. Telephone inquiries related to processing as a patent should be directed to (571) 272-4200.

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

cc: CRAIG J. YUDELL
8911 N. CAPITAL OF TEXAS HWY., SUITE 2110
AUSTIN, TX 78769

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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COOLEY LLP
ATTN: PATENT GROUP
SUITE 1100
777 - 6TH STREET, NW
WASHINGTON, DC 20001

MAILED

MAR 28 2011

OFFICE OF PETITIONS

In re Application of
Edward Prinsen, et al.
Application No. 11/556,637
Filed: November 3, 2006
Attorney Docket No. BOBJ-121/00US

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the renewed Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed March 2, 2011.

The request is **NOT APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others.

Petitioner should note that the Office will no longer accept address changes to a new practitioner of law firm filed with a Request, absent the filing of a power of attorney to the new representative. The Office will either change the correspondence address of record to the most current address information provided for the assignee of the entire interest who properly became of record under 37 CFR 3.71 or, the most current address information provided for the first named inventor.

Accordingly, since the request to withdraw from record does not include an acceptable current correspondence address for future communications from the Office, the request cannot be granted at the present time.

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

Telephone inquiries concerning this decision should be directed to undersigned at 571-272-1642.

All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

cc: BUSINESS OBJECTS AMERICAS; BUSINESS OBJECTS SA
SAP AMERICA, INC.; BUSINESS OBJECTS SOFTWARE, LTD
BUSINESS OBJECTS DATA INTEGRATION, INC.
777 6TH STREET, SUITE 1100, ATTN: B. GALLIANI
WASHINGTON, DC 20001

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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FOLEY & LARDNER LLP
150 EAST GILMAN STREET
PO BOX 1497
MADISON WI 53701-1497

MAILED

AUG 3 0 2010

OFFICE OF PETITIONS

In re Application of
John Trezza
Application No. 11/556,747
Filed: November 6, 2006
Attorney Docket Number: 088245-4755

: ON REQUEST FOR
: RECONSIDERATION OF
: PATENT TERM ADJUSTMENT

This is a decision on the petition under 37 CFR 1.705(b), filed July 7, 2010. Applicant believes that he should be accorded an additional PTA of 354 days. Applicant requests this correction solely on the basis that the Office will take in excess of three years to issue this patent.

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment solely as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file a request for reconsideration of patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicants are advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee[1].

In view thereof, the correct determination of PTA prior to issuance is **one hundred fifty (150) days** (352 days of PTO delay, reduced by 202 days of Applicant delay).

Receipt of the $200.00 fee set forth in 37 CFR 1.18(e) is acknowledged.

The application is being forwarded to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to Petitions Attorney Cliff Congo at (571) 272-3207.

Anthony Knight
Director
Office of Petitions

[1] For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
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FOLEY & LARDNER LLP
150 EAST GILMAN STREET
P.O. BOX 1497
MADISON WI 53701-1497

MAILED

FEB 28 2011

OFFICE OF PETITIONS

In re Application of :
Trezza :
Application No. 11/556,826 : ON APPLICATION FOR
Filed: November 6, 2006 : PATENT TERM ADJUSTMENT
Atty Docket No. **088245-4766** :

This is in response to the "Request for Reconsideration of Patent Term Adjustment for Patent Application under 37 CFR 1.705(b)" filed January 12, 2011. Applicants submits that the patent term adjustment to be indicated on the patent is six hundred and fifty-four(654) days, not five hundred and thirty-six (536) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request this correction solely on the basis that the Office will take in excess of three years to issue this patent and overlap considerations.

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee[1].

It is noted that any period of adjustment will be entered in light of 35 U.S.C. 154(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, which provides that:

> Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including –

---

[1] For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

(i) any time consumed by continued examination of the application requested by the applicant under section 132(b);

It is further noted that a Request for Continued Examination (RCE) was filed in this application on March 5, 2010.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/556,872	11/06/2006	Koichi TOMIDA	298785US2	9498

22850 7590 09/22/2010

OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.
1940 DUKE STREET
ALEXANDRIA, VA 22314

EXAMINER	
TO, TUAN C	

ART UNIT	PAPER NUMBER
3663	

NOTIFICATION DATE	DELIVERY MODE
09/22/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com
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SEP 21 2010

OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.
1940 DUKE STREET
ALEXANDRIA VA 22314

In re Application of	:	
Koichi TOMIDA	:	**DECISION ON PETITION**
Application No. 11/556,872	:	**UNDER 37 CFR 1.97**
Filed: November 17, 2006	:	
For: DAMPING FORCE CONTROL	:	
APPARATUS FOR VEHICLE	:	

This is in response to the petition filed on August 12, 2010 under 37 CFR 1.97 requesting the examiner to consider the prior art cited in the Information Disclosure Statements (IDSes) filed on November 6, 2006, February 22, 2008 and September 22, 2008.

The petition is DISMISSED AS MOOT.

A review of the record reveals that the examiner did consider the IDSes as indicated in the supplemental notice of allowance mailed September 20, 2010.

Telephone inquiries should be directed to Jack Keith, Supervisory Patent Examiner, at (572) 272-6878.

Katherine Matecki

Kathy Matecki, Director
Patent Technology Center 3600
(571) 272-5250

lm: 9/20/10
LM

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CONNOLLY BOVE LODGE & HUTZ LLP
1875 EYE STREET NW, SUITE 1100
WASHINGTON, DC 20006

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FEB 02 2011

OFFICE OF PETITIONS

In re Application of :
Eugene A. FUSZ, et *al.* :
Application No. 11/556,913 : DECISION GRANTING PETITION
Filed: November 6, 2006 : UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. **27592-01050-US5** :

This is a decision on the petition under 37 CFR 1.313(c)(2), filed February 2, 2011, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). *See* 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on December 30, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (571) 272-7253.

This application is being referred to Technology Center AU 3691 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/Monica A. Graves/
Petitions Examiner, Office of Petitions

[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form* ***must*** *be completed and timely submitted to avoid abandonment of the application.*

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 2/17/2012

TO SPE OF : ART UNIT 3691 Kalinowski Alexander (spe)

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/556913 Patent No.: 8024226

CofC mailroom date: 1/20/2012

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Note: _____

_____

Certificates of Correction Branch

571-272-8680 _____

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☑ **Approved** — All changes apply.
- ☐ **Approved in Part** — Specify below which changes do not apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: _____

_____

_____

_____

_____

SPE — 3691 Art Unit

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SUITE 300
WOODBURY MN 55125

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SEP 28 2010

OFFICE OF PETITIONS

In re Application of
Freed, et al.
Application No. 11/556,951
Filed: November 6, 2006
Attorney Docket Number: 1014-062US02

ON REQUEST FOR
RECONSIDERATION OF
PATENT TERM ADJUSTMENT

This is a decision on the petition under 37 CFR 1.705(b), filed March 5, 2010. Applicants believe that they should be accorded an additional PTA. Applicants request this correction solely on the basis that the Office will take in excess of three years to issue this patent.

Insofar as the instant application for patent term adjustment requests reconsideration of the patent term adjustment solely as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file a request for reconsideration of patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicants are advised that they may wait until the time of the issuance of the patent and file a

request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee[1].

In view thereof, the correct determination of PTA prior to issuance is **five hundred ninety-two (592) days** (592 days of PTO delay, reduced by 0 days of Applicant delay).

The $200.00 fee set forth in 37 CFR 1.18(e) has been charged to Deposit Account No. 50-1778, as authorized.

The application is being forwarded to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to Petitions Attorney Cliff Congo at (571) 272-3207.

Anthony Knight
Director
Office of Petitions

[1] For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

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OFFICE OF PETITIONS

FISH & RICHARDSON P.C. (TC)
PO BOX 1022
MINNEAPOLIS MN 55440-1022

In re Patent No. 7,983,691
Issued: July 19, 2011
Application No. 11/557,097
Filed: November 6, 2006
Atty. Dkt. No.: 16113-0280001

: DECISION ON PATENT TERM

This is a decision on the application for patent term adjustment filed September 19, 2011 requesting that the patent term adjustment be increased from 584 days to 718 days.

The request for reconsideration of the patent term adjustment (PTA) pursuant to 37 CFR 1.705(d) is **DISMISSED**.

The above-identified application matured into U.S. Pat. No. 7,983,691 on July 19, 2011. The patent issued with a patent term adjustment of 584 days. The instant application for patent term adjustment was timely filed in accordance with 37 CFR 1.705(d).

Patentees contest the adjustment of 320 days of "B delay" and assert that the correct period of adjustment in this regard is 455 days. Patentees' arguments have been carefully considered, but are not found persuasive.

35 USC 154(b)(1)(B) states in relevant part:

> Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including — (i) any time consumed by continued examination of the application requested by the applicant under section 132(b).

37 CFR 1.702(b) states in relevant part:

> Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including: (1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b).

37 CFR 1.703(b) states in relevant part:

> The period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the sum of the following periods: (1) The number of days, if any, in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

Accordingly, in the instant matter, and in compliance with the provisions of law and rules set forth above, the period of adjustment under § 1.702(b) is 320 days, the period from September 23, 2010, the date that the RCE was filed, to July 19, 2011, the date that the patent issued, being excluded from the period of adjustment under 37 CFR 1.702(b).

In view thereof, no adjustment to the patent term will be made.

Receipt is hereby acknowledged of the required $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

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OFFICE OF PETITIONS

FISH & RICHARDSON P.C. (TC)
PO BOX 1022
MINNEAPOLIS MN 55440-1022

In re Patent No. 7,983,691
Issued: July 19, 2011
Application No. 11/557,097
Filed: November 6, 2006
Atty. Dkt. No.: 16113-0280001

: DECISION ON REQUEST FOR
: RECONSIDERATION OF
: PATENT TERM ADJUSTMENT

This is a decision on the request for reconsideration of decision mailed September 23, 2011 with respect to the application for patent term adjustment under 37 CFR 1.704(d) filed September 19, 2011. This request, filed November 22, 2011, is deemed timely filed within the meaning of 37 CFR 1.181(f).

RELEVANT BACKGROUND

Patentees request that a decision on this request for reconsideration of patent term adjustment be deferred or delayed until after a final decision has been rendered in Abbott Biotherapeutics Corp v. Kappos, 1:2010cv01853 (D.D.C. 2010).

The request is hereby **DENIED**.

The above-identified application matured into U.S. Patent No. 7,983,691 on July 19, 2011 with a revised patent term adjustment of 584 days. On September 23, 2011, a decision on patentees' application for patent term adjustment under 37 CFR 1.705(d), filed September 19, 2011, was mailed. The decision under 37 CFR 1.705(d) mailed September 23, 2011 dismissed patentees' request for increase in patent term adjustment from 584 days to 718 days.

Patentees maintain that the Office incorrectly calculated Office delay pursuant to 37 CFR 1.702(b). Patentees contend that the Office erred in subtracting from the "B delay" a period of time that was not "consumed by continued examination of the application." Specifically, patentees argue that subsequent to the filing of the request for continued examination on September 23, 2010, examination of the application closed on March 7, 2011, the date upon which the Notice of Allowance was mailed. Thus, patentees argue that no continued examination took place during the 135 day period from March 7, 2011 (the mailing date of the Notice of Allowance) until July 19, 2011 (the date the patent was issued). As such, patentees maintain that the "B delay" should include the 135 days and be increased from 320 days to 455 days. Thus, patentees conclude that the correct patent term adjustment is 718 days (415 days pursuant to 37

CFR 1.703(a) plus 455 days pursuant to 37 CFR 1.703(b) less one overlapping day less 151 days of applicant delay pursuant to 37 CFR 1.704(b)).

RELEVANT STATUTES

The statutory basis for calculation of "B delay" is 35 U.S.C. 154(b)(1)(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, which provides that:

> Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including –
>
> (i) any time consumed by continued examination of the application requested by the applicant under section 132(b);
>
> (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or
>
> (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued.

The implementing regulation, 37 CFR 1.702(b) provides that:

> Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 11 l(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including:
>
> (1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b);
>
> (2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a);
>
> (3) Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181;
>
> (4)Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or

(5) Any delay in the processing of the application by the Office that was requested by the applicant.

DECISION

Patentees' arguments have been considered, but not found persuasive. The Office calculated the period of "B delay" pursuant to 35 U.S.C. 154(b)(1)(B)(i) and 37 CFR 1.702(b)(1) as 320 days based on the application having been filed under 35 USC 111(a) on November 6, 2006 and the patent not having issued as of November 7, 2009, the day after the date that is three years after the date that the application was filed, and a request for continued examination under 132(b) having been filed on September 23, 2010. In other words, the 135-day period beginning on the date of mailing of the notice of allowance to the date of issuance of the patent was considered time consumed by continued examination of an application under 35 U.S.C. 132(b) and was not included in the "B delay.

The Office's calculation of "B delay" is correct. The "B delay" is an adjustment entered if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed. However, the adjustment does not include, among other things, any time consumed by continued examination of the application at the request of the applicant under 35 U.S.C. 132(b)[1]. So, with respect to calculating the "B delay" where applicant has filed a request for continued examination, the period of adjustment is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the number of days in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

Further, counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentees do not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly

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[1] Pursuant to 35 U.S.C. 132(b), 37 CFR 1.114 provides for continued examination of an application, as follows:

(a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:
  (1) Payment of the issue fee, unless a petition under § 1.313 is granted;
  (2) Abandonment of the application; or
  (3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

(b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is not any time consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See, Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56366, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

Patentees' argument that the period of time after the issuance of a notice of allowance on a request for continued examination is not "any time consumed by continued examination requested by the applicant under section 132(b)" within the meaning of 35 U.S.C. 154(b)(1)(B)(i) is not availing. This limitation is not supported by the statutory language. Garcia v. United States, 469 U.S. 70, 75 (1984) ("only the most extraordinary showing of contrary intentions from [legislative history] would justify a limitation on the 'plain meaning' of the statutory language"). BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning"). The statute provides for a guarantee of no more than 3-year application pendency, by providing for an adjustment in the patent term:

First, "Subject to the limitations of paragraph (2)," means that the limitations of paragraph 2 apply to this paragraph's adjustment of patent term. That is, the day-to-day extension of patent term for pendency beyond the 3 year period is restricted as follows: 1) "B delay" cannot accrue for days of "A delay" that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

Second, "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of the United States) after the application filing date before an adjustment will accrue for "B delay."

Third, "not including- (i) any time consumed by continued examination of the application requested by the applicant under section 132(b); (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time

consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), meaning that the three-year period does not include "any time consumed by" or "any delay in processing," as specified in clauses (i)-(iii). This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, 580 F. Supp. 2d 138, 88 U.S.P.Q. 2d 1538 (D.D.C. 2008), because the clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate this effect, the statute, *inter alia,* grants adjustments of patent term whenever the patent prosecution takes more than three years, regardless of the reason. The time consumed by prosecution of the application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. The time it takes to prosecute the application ends not with the mailing of the notice of allowance, but with the issuance of the patent.

Thus, not including "any time consumed by" means not including any days used to prosecute the application as specified in clauses (i)-(ii)[2]. Clause (i) specifies "any time consumed by continued examination of the application requested by the applicant under section 132(b)." Clause (ii) specifies "any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court." "Time" in the context of this legislation throughout refers to days. "Consumed by" means used by or used in the course of. Websters Collegiate Dictionary, (11th ed.). The "any" signifies that the days consumed by are "any" of the days in the pendency of the application, and not just days that occur after the application has been pending for 3 years. As such, "any time consumed by" refers to any days used in the course of 1) continued examination of the application under section 132(b)(the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, and 4) appellate review. Thus, that 3-year period given to the Office to issue a patent before an adjustment will accrue for "B delay" does not include any days used in the course of or any time consumed by clauses (i)-(ii), including any time consumed by the filing of a request for continued examination.

---

[2] Clause (iii) provides for not including (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued. It is noted that paragraph (3)(C) allows with an adequate showing by applicant for reinstatement of no more than 3 months of the patent term reduced for applicant delay in taking in excess of three months to respond.

Fourth, "the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued" meaning that the consequence of this failure is that after "the end of that 3-year period" an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the law. See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See, 35 U.S.C. 151 ("[i]fit appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See, 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the issuance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in BlackLight Power, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. See, BlackLight Power, Inc. v. Rogan, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is

any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously been issued for the application. See, In re Drawbaugh, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See, 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See, 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures[3] permit the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See, 37 CFR 1.114(a)(1). As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the notice of allowance. All the time the application is pending from the date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that request. Applicant has gotten further prosecution of the application without having to file a continuing application under 37 CFR 1.53(b).

All of the continued examination pursuant to the filing of the request by the applicant is properly excluded from the delay attributed to the Office. 35 U.S.C. 154(b)(1)(B)'s guarantee of a total application pendency of no more than three years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

CONCLUSION

For the above-stated reasons, a review of the petition and file wrapper of the above-identified patent reveals that the above-identified patent is not entitled to a patent term extension or adjustment of 718 days. Therefore, the petition to change the patent term adjustment indicated on the above-identified patent to 718 days is DENIED.

---

[3] Note, on occasion, even where a request for continued examination has already been filed and a notice of allowance issued pursuant to that request, applicant may file a further request for continued examination.

This decision may be viewed as final agency action. See, MPEP 1002.02(b).

Telephone inquiries specific to this matter should be directed to Attorney Advisor Alesia M. Brown at (571) 272-3205.

Anthony Knight
Director
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : October 18, 2010

TO SPE OF : ART UNIT 2116 - SPE

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/557,117 Patent No.: 7,681,052 B2

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square Building
2800 South Randolph Street
Arlington, VA 22206

Antonio Johnson

Should the changes to claims be approved as requested by applicant?
See COCIN dated 05-27-2010

_____
Certificates of Correction Branch
(571)272-0483

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ✓ **Approved** — All changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: _____

_____

_____ ____ **SPE** /Thomas Lee/ **Art Unit** 2116

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/557,175	11/07/2006	Paul Joseph O'Dea	215830-1 (8081.477)	1032

27061 7590 07/15/2011

ZIOLKOWSKI PATENT SOLUTIONS GROUP, SC (GEMS)
136 S WISCONSIN ST
PORT WASHINGTON, WI 53074

EXAMINER	
ABDI, AMARA	

ART UNIT	PAPER NUMBER
2624	

NOTIFICATION DATE	DELIVERY MODE
07/15/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

info@zpspatents.com
klb@zpspatents.com
sml@zpspatents.com

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ZIOLKOWSKI PATENT SOLUTIONS GROUP, SC (GEMS)
136 S WISCONSIN ST
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JUL 14 2011
DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600

In re Application of:
O'DEA, PAUL JOSEPH
Application Serial No.: 11/557,175
Filed: November 07, 2006
For: **METHODS AND APPARATUS TO FACILITATE PICTURE ARCHIVING**

DECISION
ON PETITION

This is a decision on the petition, filed November 12, 2010, seeking supervisory review of restriction requirement pursuant to 37 CFR § 1.181.

Petitioner contends that 1) in the restriction requirement of the September 15, 2010 Office Action, the Examiner has not satisfied the burden to show restriction between the inventions of "inventions I, II and III" as required in MPEP 806.05 and 808.02. Accordingly, applicant requests rejoinder of all claims; and 2) the Final Office Action of September 15, 2010 was incomplete due to the examiner's failure to address applicant's arguments regarding 35 USC 102 and 103 rejections of claim 21-28. Accordingly, applicant requests issuance of a new Office action.

BACKGROUND

A review of the file indicates a non-final rejection was made on February 4, 2010. In the office action, claims 2 and 11 were rejected under 35 USC 102, as being anticipated by Silva-Craig et al. Claims 3-10, 12-20 were rejected under 35 USC 103 as being obvious over Silva-Craig et al in view of Fors et al.

The applicant responded with an amendment and remark of the rejections on February 4, 2010. In the amendment, all original claims 1-20 were canceled and new claims 21-40 were added. Applicant remarked that no new matter has been added. The prior art of record does not disclose, or render obvious of the newly added claims 21-40.

The office responded with a final rejection on June 24, 2010. In the final rejection, a combination/subcombination restriction requirement was made for the reason of "original presentation" to claims 21-28 as being invention I (class 382/128), and claims 29-40 as being invention II (class 705/2). The Final Office Action elected invention I and withdrew invention II from consideration. Subsequently, claims 21, 25-28 were rejected under 35 USC 102 over Fors et al. Claims 22, 23 and 24 were rejected under 35 USC 103 over Fors in view of Ruckschloss.

On August 8, 2010 (as acknowledged in Interview Summary 9/15/10) an interview was held between applicant's representative, Stphanie Laundre and examiner's SPE, Vu Le . During the interview, SPE Vu Le indicated that the rationale for the restriction requirement in the June 24, 2010 Final Office Action was improper. A new Office Action is forthcoming with a revised ground for a restriction requirement.

On August 24, 2010, the applicant filed a petition seeking supervisory review of the restriction requirement, and a remark arguing the restriction requirement should be withdrawn and the Fors

reference does not teach the claimed limitations as called for in claim 21 under 35 USC 102 rejection.

On September 15, 2010, a 2nd final rejection was made by the office. In the 2nd final rejection, a combination/subcombination restriction requirement was again made for the same reason of "original presentation" to claims 21-28 as being invention I, claims 29-34 as being invention II , and claims 35-40 as being invention III. The Office Action elected invention I and withdrew inventions II and III from consideration. Subsequently, claims 21, 25-28 were again rejected under 35 USC 102 over Fors et al. Claims 22, 23 and 24 were again rejected under 35 USC 103 over Fors in view of Ruckschloss with the same rejection made on June 24, 2008.

On November 12, 2010, applicant filed 1) a renewed petition seeking supervisory review of restriction requirement pursuant to 37 CFR § 1.181, and 2) an amendment arguing the new ground restriction requirement should be withdrawn and 3) the 2nd Final Office Action did not address the arguments set forth by applicant in the response filed August 24, 2010 regarding the 35 USC 102 and 103 rejections.

REGULATIONS AND PRACTICE

MPEP 806.05(c) Criteria of Distinctness Between Combination and Subcombination [R-5] states:

The inventions are distinct if it can be shown that a combination as claimed:

(A) does not require the particulars of the subcombination as claimed for patentability (to show novelty and unobviousness), and
(B) the subcombination can be shown to have utility either by itself or in another materially different combination.

MPEP 706.07(a) [R-6] Final Rejection, When Proper on Second Action states:

Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims, nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

OPINION

Petitioner contends:

"That is, to support the requirement for restriction of claims 29-40, MPEP §821.03 requires that the restricted claims be directed to an invention distinct from and independent of claims 1-20, which were originally filed with the present application. Original claim 1 was directed to a method including, in part, directly providing a software core module on a first diagnostic imaging machine, and directly providing the software core module on a second diagnostic imaging machine. Since both "Invention II" and "Invention III" also include two imaging devices with embedded PACS, claims 29-40 are not distinct from and independent of original claim I. Accordingly, the Examiner's reliance on MPEP §821.03 to support the requirement for restriction is improper.

Further, the finality of the September 15, 2010 Office Action is also premature. Even assuming, arguendo, that the Examiner's requirement for restriction on the grounds of election by

original presentation was proper, the MPEP and the Code of Federal Regulations do not permit the Examiner to issue a restriction requirement for the first time in a Final Office Action. In fact, a restriction requirement may only be made in a non-final office action. As set forth in 37 C.F.R. § I. 142, a requirement for restriction "may be made at any time before final action." 37 C.F.R. § 1.142 (emphasis added). Accordingly, the finality of the September 15, 2010 Office Action is premature.

Turning to the substantive grounds for the restriction, the Examiner identified three "inventions" in the pending application. The Examiner's classification of the inventions included: "Invention I" consisting of claims 21-28, "Invention II" consisting of claims 29-34, and "Invention III" consisting of claims 35-40. *See Final Office Action,* 9/15/2010, pg. 2. According to the Examiner, "Inventions I and II are directed to related apparatuses" and "Inventions III and I are related as process and apparatus for its practice." Id. at pgs. 2-3.

MPEP §806.05(j), which the Examiner relied on in support of the restriction of "Invention I" and "Invention II," requires two-way distinctness. Under MPEP §806.05(j), the inventions are distinct if"(A) the inventions as claimed do not overlap in scope, i.e., are mutually exclusive; (B) the inventions as claimed are not obvious variants; and (C) the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect." MPEP §806.05(j) (emphasis added).

In the Office Action, the Examiner stated that "the inventions as claimed do not encompass overlapping subject matter and there is nothing of record to show them to be obvious variants." *Final Office Action,* pg. 3. Applicant respectfully disagrees. Claim 21 calls for, in part, an imaging device comprising a detector, a processing circuit, a workstation and a PACS embedded within the imaging device. Likewise, claim 29 calls for, in part, a first imaging device comprising a detector, a processing circuit, a workstation, and a first *PACS* embedded within the first imaging device. As both claims call for an imaging device having a detector, processing circuit, workstation, and PACS embedded within the imaging device, claims 2I and 29 clearly encompass overlapping subject matter. Accordingly, "Invention I" and "Invention II" are not distinct. Further, under M'PEP §806.05(j) "both two-way distinctness and reasons for insisting on restriction are necessary, i.e., separate classification, status in the art or field of search." MPEP 9806.05(j) (emphasis added). In the September 15, 2010 Final Office Action, the Examiner did not set forth any reasons for insisting on restriction. As such, the Examiner did not satisfy the burden to show restriction between the inventions of "Inventions" I and II as required in MPEP § 806.05.

The Examiner relied on MPEP 806.05(e) in support of the restriction of "Invention I" and "Invention III," stating that "Inventions III and I are related as process and apparatus for its practice" and that "the process of invention III can be practiced either by invention I or invention II..." *Final Office Action,* pg. 3. "Invention r' consists of claims 21-28 drawn to an imaging device with an embedded PACS and "Invention III' consists of claims 35-40 drawn to a method of manufacturing a hospital enterprise that includes providing an imaging device and coupling a PACS to the imaging device. As claims 35-40 are directed to a method of manufacturing, they cannot be said to be related as process and apparatus for its practice under MPEP 806.05(e).

Further, in order to insist upon a restriction, the Examiner "must explain why there would be a serious burden on the examiner if restriction is not required." MPEP §808.02. In the instant case, the Examiner has not explained how "Invention I" and "Invention III" have a separate classification, have a separate status in the art when they are classifiable together, or require a different field of search as required by MPEP 808.02. *Id.* Accordingly, the Examiner has not satisfied the burden to show restriction between the inventions of "Inventions" I and III as required in MPEP §9 806.05 and 808.02. Thus, for at least the reasons set forth above, Applicant respectfully requests that the restriction be withdrawn.

Failure to Address 35 U.S.C. §102 Arguments

MPEP §707.07(f) requires that "Where the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the

substance of it. However, in the September 15, 2010 Final Office Action the Examiner did not address any of the detailed arguments set forth by Applicant in the Response filed August 24, 2010 regarding the § t02(b) and §103 rejections. Instead, the Examiner merely copied verbatim the basis for the rejections of claims 21 and 25-28 under 35 U.S.C. §102(b) as being anticipated by Fors et al. as well as the basis for the rejections of claims 22-24 under 35 U.S.C. §103(a) as being unpatentable over Fors et al. in view of Ruekschloss. As such, the September 15, 2010 Final Office Action did not satisfy the requirements of MPEP §707.07(f). "

A review of the record shows that the reason for the restriction requirement between inventions I and II was that invention II requires additional PACs. (see the 2nd Final Office Action, 9/15/10). There is no evidence provided in the 2nd Final Office Action that the combination claim 29 (invention II) is patentable without the details of the subcombination claim 21(invention I) as argued in the petition.

The reason for the restriction requirement between inventions I and III was that "inventions I and III are related as process and apparatus for its practice". Again, there is no evidence provided in the 2nd Final Office Action that "the process of invention III can be practiced either by invention I or Invention II, which have been proven to be materially different apparatuses".

The restriction requirement of the 2nd Final Office Action did not set forth the separate classification, status in the art or field of search. Thus, restriction requirement in the 2nd Final Office Action did not demonstrate a serious burden on the examiner if the restriction is not required.

Considering the rejections under 35 USC 102 and 103, the 2nd Final Office Action failed to respond to the argument provided by the applicant. Thus, the September 15, 2010 Final Office action was incomplete as argued.

CONCLUSION

For the above stated reasons, the petition to withdraw 1) the restriction requirement and 2) the finality in the 2nd Final Office Action on September 15, 2010 is **GRANTED**.

The application is being returned to the examiner, the examination is reopend to consider all claims 21-40, and a new non-final Office action will be forth coming.

John LeGuyader, Director
Technology Center 2600
Communications

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MINNEAPOLIS MN 55402-0902

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OFFICE OF PETITIONS

In re Application of :
James M. Jordan et al :
Application No. 11/557,188 : DECISION GRANTING PETITION
Filed: November 7, 2006 : UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 2968.304USU1 :

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, March 21, 2012 to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). *See* 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on March 20, 2012 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to Irvin Dingle at (571) 272-3210.

This matter is being referred to Technology Center AU 2111 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

/Irvin Dingle/
Irvin Dingle
Petitions Examiner
Office of Petitions

[1] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above. Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

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AUG 17 2011

OFFICE OF PETITIONS

In re Application of

Brown

Application No. 11/557,397

Filed: November 7, 2006

Attorney Docket No. **Brown-00001**

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed August 5, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The above-cited application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, December 8, 2009, which set a shortened statutory period for reply of three (3) months from its mailing date. No extension of time pursuant to 37 CFR 1.136(a) was obtained within the allowable period. Accordingly, the application became abandoned on March 9, 2010. A Notice of Abandonment was mailed June 18, 2010.

The address cited on the petition differs from the address of record. A courtesy copy of the decision is being mailed to the address cited on petition. All future correspondence will be mailed solely to the address of record absent appropriate written instructions to the contrary.

The amendment filed August 5, 2011, is noted.

The application is being forwarded to Technology Center 3700, GAU 3774 for further processing.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

cc:
Kevin L. Brown
7917 Carrleigh Parkway
Spingfield, VA 22152

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FISH & RICHARDSON P.C.
PO BOX 1022
MINNEAPOLIS MN 55440-1022

In re Patent No. 7,945,546	:
BLISS et al.	: DECISION ON REQUEST FOR
Issue Date: May 17, 2011	: RECONSIDERATION OF
Application No. 11/557,460	: PATENT TERM ADJUSTMENT
Filed: November 7, 2006	: AND NOTICE OF INTENT TO ISSUE
Attorney Docket No. 16113-0288001	: CERTIFICATE OF CORRECTION
Title: LOCAL SEARCH AND MAPPING FOR MOBILE DEVICES	:

This is a decision on the petition filed on July 15, 2011, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by two hundred forty-four (244) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein.** The term of the above-identified patent is extended or adjusted by **one hundred twelve (112) days.**

BACKGROUND

On May 17, 2011, the above-identified application matured into U.S. Patent No. 7,945,546, with a revised patent term adjustment of 140 days. On July 15, 2011, Patentee timely submitted this request for reconsideration of patent term adjustment (with required fee), asserting that the correct number of days of Patent Term Adjustment is 244.

Initially, Patentee discloses that a period of reduction of 28 days under 37 CFR 1.704(c)(8) should be entered for the filing of a supplemental reply in the form of an IDS on August 5, 2010, after the filing of a proper reply on July 8, 2010. The record does not support a conclusion that the examiner expressly requested the filing of the IDS. Further, a review of the IDS, filed August 5, 2010, reveals that applicants did not include a statement under 37 CFR 1.704(d). Accordingly, a period of reduction of 28 days is merited and will be entered. The Office thanks Patentee for this disclosure.

Next, Patentee maintains that the Office incorrectly calculated Office delay pursuant to 37 CFR 1.702(b). Patentee contends that the Office erred in subtracting from the "B delay" a period of time that was not "consumed by continued examination of the application." Specifically, Patentee argues that (after the filing of the request for continued examination) the Office mailed a Notice of Allowance on January 6, 2011, thereby closing examination of the application on that date. Thus, Patentee argues no continued examination took place during the 132 day period from January 6, 2011 (the mailing date of the Notice of Allowance) until May 17, 2011 (the date the patent was issued). As such, Patentee maintains that the "B delay" should include the 132 days and be increased from 0 to 132 days. Patentee concludes that the correct patent term adjustment is 244 days (the sum of 270 days of "A delay" and 132 days of "B delay" minus 158 days of applicant delay).

RELEVANT STATUTE AND REGULATIONS

The statutory basis for calculation of "B delay" is 35 U.S.C. 154(b)(1)(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, which provides that:

> Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including —
>
> (i) any time consumed by continued examination of the application requested by the applicant under section 132(b);

(ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or

(iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued.

The implementing regulation, 37 CFR 1.702(b) provides that:

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including:

(1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b);

(2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a);

(3) Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181;

(4) Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or

(5) Any delay in the processing of the application by the Office that was requested by the applicant.

OPINION

Patentee's arguments have been considered, but not found persuasive. The Office calculated the period of "B delay" pursuant to 35 U.S.C. 154(b)(1)(B)(i) and 37 CFR 1.702(b)(1) as 0 days based on the application having been filed under 35 U.S.C. 111(a) on November 7, 2006, and the patent not having issued as of the day after the three year date, November 8, 2009, and a request for continued examination under 132(b) having been filed on July 24, 2009. In other words, the 132-day period beginning on the date of mailing of the Notice of Allowance to the date of issuance of the patent was considered

time consumed by continued examination of an application under 35 U.S.C. 132(b) and was not included in the "B delay."

The Office's calculation of "B delay" is correct. The "B delay" is an adjustment entered if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed. However, the adjustment does not include, among other things, any time consumed by continued examination of the application at the request of the applicant under 35 U.S.C. 132(b)[1]. Thus, with respect to calculating the "B delay", where applicant has filed a request for continued examination the period of adjustment is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the number of days in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

Further, counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentee does not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins

---

[1] Pursuant to 35 U.S.C. 132(b), 37 CFR 1.114 provides for continued examination of an application, as follows:

(a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:

(1) Payment of the issue fee, unless a petition under § 1.313 is granted;

(2) Abandonment of the application; or

(3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

(b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is not any time consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56366, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

Patentee's argument that the period of time after the issuance of a notice of allowance on a request for continued examination is not "any time consumed by continued examination requested by the applicant under section 132(b)" within the meaning of 35 U.S.C. 154(b)(1)(B)(i) is not availing. This limitation is not supported by the statutory language. Garcia v. United States, 469 U.S. 70, 75 (1984) ("only the most extraordinary showing of contrary intentions from [legislative history] would justify a limitation on the 'plain meaning' of the statutory language"). BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning"). The statute provides for a guarantee of no more than 3-year application pendency, by providing for an adjustment in the patent term:

First, "Subject to the limitations of paragraph (2)," means that the limitations of paragraph 2 apply to this paragraph's adjustment of patent term. That is, the day-to-day extension of patent term for pendency beyond the 3 year period is restricted as follows: 1) "B delay" cannot accrue for days of "A delay" that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

Second, "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of

the application in the United States," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of the United States) after the application filing date before an adjustment will accrue for "B delay."

Third, "not including- (i) any time consumed by continued examination of the application requested by the applicant under section 132(b); (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), meaning that the three-year period does not include "any time consumed by" or "any delay in processing," as specified in clauses (i)-(iii). This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, 580 F. Supp. 2d 138 (D.D.C. 2008), because the clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate this effect, the statute, *inter alia*, grants adjustments of patent term whenever the patent prosecution takes more than three years, regardless of the reason. The time consumed by prosecution of the application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. The time it

takes to prosecute the application ends not with the mailing of the notice of allowance, but with the issuance of the patent.

Thus, not including "any time consumed by" means not including any days used to prosecute the application as specified in clauses (i)-(ii)[2]. Clause (i) specifies "any time consumed by continued examination of the application requested by the applicant under section 132(b)." Clause (ii) specifies "any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court." "Time" in the context of this legislation throughout refers to days. "Consumed by" means used by or used in the course of. *Websters Collegiate Dictionary*, (11th ed.). The "any" signifies that the days consumed by are "any" of the days in the pendency of the application, and not just days that occur after the application has been pending for 3 years. As such, "any time consumed by" refers to any days used in the course of 1) continued examination of the application under section 132(b)(the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, and 4) appellate review. Thus, that 3-year period given to the Office to issue a patent before an adjustment will accrue for "B delay" does not include any days used in the course of or any time consumed by clauses (i)-(ii), including any time consumed by the filing of a request for continued examination.

Fourth, "the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued" meaning that the consequence of this failure is that after "the end of that 3-year period" an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.

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[2] Clause (iii) provides for not including (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued. It is noted that paragraph (3)(C) allows with an adequate showing by applicant for reinstatement of no more than 3 months of the patent term reduced for applicant delay in taking in excess of three months to respond.

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the law. See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the

applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in Blacklight Power, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. See BlackLight Power, Inc. v. Rogan, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously been issued for the application. See In re Drawbaugh, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures[3] permit the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See 37 CFR 1.114(a)(1).

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the applicant under section 132(b) does

[3] Thus, on occasion, even where a request for continued examination has already been filed and a notice of allowance issued pursuant to that request, applicant may file a further request for continued examination.

not terminate with the mailing of the Notice of Allowance. All the time the application is pending from the date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that request. Applicant has gotten further prosecution of the application without having to file a continuing application under 37 CFR 1.53(b).

All of the continued examination pursuant to the filing of the request by the applicant is properly excluded from the delay attributed to the Office. 35 U.S.C. 154(b)(1)(B)'s guarantee of a total application pendency of no more than three years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

In this instance, a request for continued examination was filed on July 24, 2009, and the patent issued by virtue of that request on May 17, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on July 24, 2009, and ending on May 17, 2011, is not included in calculating Office delay.

CONCLUSION

Accordingly, the patent term adjustment is 112 days (270 days of "A delay" + 0 days of "B delay" - 0 days of overlap - 158 day of applicant delay).

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentee is given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges the payment of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

This matter is being referred to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **112 days**.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3211.

Christina T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

DRAFT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,945,546 B2

DATED : May 17, 2011

INVENTOR(S) : Bliss et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (140) days.

Delete the phrase "by 140 days" and insert – by 112 days--

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:

DATE :

TO SPE OF : ART UNIT 1648

SUBJECT : Request for Certificate of Correction on Patent No.: 7731951

A response is requested with respect to the accompanying request for a certificate of correction.

Please complete this form and return with file, within **7** days to:
Certificates of Correction Branch - ST (South Tower) 9A22
Palm location **7590** - Tel. No. (703) 305-8309

With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Thank You For Your Assistance **Certificates of Correction Branch**

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriated box.

☒	**Approved**	All changes apply.
☐	**Approved in Part**	Specify below which changes **do not** apply.
☐	**Denied**	State the reasons for denial below.

Comments:

/Zachariah Lucas/ AU 1648

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P.O. Box 1450
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DILLON & YUDELL LLP
8911 N. CAPITAL OF TEXAS HWY.,
SUITE 2110
AUSTIN TX 78759

MAILED

MAY 10 2011

OFFICE OF PETITIONS

In re Application of :
Peeyush Jaiswal et al. :
Application No. 11/557,538 : DECISION ON PETITION
Filed: November 8, 2006 :
Attorney Docket No. END920060172US1 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 25, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed August 19, 2010, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on November 20, 2010. A Notice of Abandonment was mailed on March 2, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $1,620 and (3) a proper statement of unintentional delay. Accordingly, the amendment is accepted as being unintentionally delayed.

Telephone inquiries concerning this decision should be directed to Kimberly Inabinet at (571) 272-4618.

This application is being referred to Technology Center AU 2614 for appropriate action by the Examiner in the normal course of business on the reply received March 25, 2011.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

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FITZPATRICK CELLA HARPER & SCINTO
1290 Avenue of the Americas
NEW YORK NY 10104-3800

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SEP 17 2010

OFFICE OF PETITIONS

In re Application of	:	
Chihiro Nagura	:	
Application No. 11/557,547	:	DECISION GRANTING PETITION
Filed: November 8, 2006	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 03500.125604.	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, September 17, 2010 to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). *See* 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on August 24, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to Terri Johnson at (571) 272-2991.

This application is being referred to Technology Center AU 2627 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.*

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OFFICE OF PETITIONS

PFIZER INC
PATENT DEPARTMENT
Bld 114 M/S 9114
EASTERN POINT ROAD
GROTON CT 06340

In re Patent No. 7,638,537	: DECISION ON
Munchhof, et al.	: REQUEST FOR RECONSIDERATION
Application No. 11/557,638	: of PATENT TERM ADJUSTMENT
Issue Date: December 29, 2009	: and
Filed: November 8, 2006	: NOTICE OF INTENT TO ISSUE
Attorney Docket No. PC25405C	: CERTIFICATE OF CORRECTION

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT INCLUDING REQUEST FOR RECONSIDERATION UNDER 37 CFR § 1.705(d)", filed January 11, 2010, requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one hundred twenty-eight (128) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein.**

On December 29, 2009, the instant application matured into U.S. Patent No. 7,638,537 with a patent term adjustment of zero (0) days. Patentees filed the instant application for patent term adjustment on January 11, 2010. The Office determined a patent term adjustment of 0 days based upon 118 days of Office delay pursuant to 37 CFR 1.703(a)(1), reduced by one hundred eighteen (118) days of Applicant delay due to two instances of Applicant delay. Applicants were assessed forty-one (41) days pursuant to 37 CFR 1.704(b), and seventy-seven (77) days pursuant to 37 CFR 1.704(c)(7).

Patentees are correct that the amount of days over 36 months from the filing date of the application until the issue date of the patent was not included in the "B" delay period. The over three year period began on November 9, 2009 and ended on December 29, 2009(the patent issue date), and is 51 days. See 35 U.S.C. 154(b)(1)(B)(i). As such, the "B" delay period is 51 days.

However, patentees ignore the seventy-seven (77) days of Applicant delay assessed pursuant to 37 CFR 1.704(c)(7). The Office mailed a Restriction Requirement on May 5, 2008. Applicants filed a reply on May 20, 2008. The Office mailed a letter on July 29, 2008, stating that Applicant's May 20, 2008 reply was not fully responsive because it contained an omission. Applicants filed a responsive reply on August 5, 2008. Accordingly, pursuant to 37 CFR 1.704(c)(7), seventy-seven (77) days of Applicant delay were properly assessed.

In view thereof, the correct number of days of patent term adjustment is fifty-one (51) days (169 days (118+51) of PTO delay, reduced by 118 (77+41) days of Applicant delay).

Receipt of the $200.00 fee set forth in 37 CFR 1.18(e) is acknowledged.

The application is being forwarded to the Certificate of Corrections Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **fifty-one (51)** days.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Cliff Congo, at (571) 272-3207.

Anthony Knight
Director
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,638,537 B2

DATED : **December 29, 2009**

INVENTOR(S) : Munchhof et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 0 days.

Delete the phrase "by 0 days" and insert – by 51 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

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YAHOO! INC.
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MET LIFE BUILDING
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NEW YORK NY 10166

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JAN 24 2011

OFFICE OF PETITIONS

In re Application of :
Blinnikka :
Application No. 11/557,720 : DECISION
Filed: 8 November, 2006 :
Attorney Docket No. 85804-029400 :

This is a decision on the petition filed on 18 August, 2010, pursuant to 37 C.F.R. §1.137(b) for revival of an application abandoned due to unintentional delay .

The petition under 37 C.F.R. §1.137(b) is **GRANTED**.

As to the Allegations
of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement and/or showing of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c)(II).

BACKGROUND

The record reflects as follows:

The Applicant failed to reply to the Notice of Allowance/Allowability and Fees Due mailed on 19 April, 2010, with reply due under a non-extendable deadline on or before 19 July, 2010.

The application went abandoned by operation of law after midnight 19 July, 2010.

The Office mailed the Notice of Abandonment on 5 August, 2010.

On 18 August, 2010, Petitioner filed, *inter alia*, a petition (with fee) pursuant to 37 C.F.R. §1.137(b) with reply in the form of fees due, and made a statement of unintentional delay.

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

Out of an abundance of caution, Petitioners always are reminded that those registered to practice and all others who make representations before the Office **must** inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[1]

STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).[2] The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a Petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority.

Unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[3]))

As to Allegations of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee.

It appears that the requirements under the rule have been satisfied.

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[1] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

[2] 35 U.S.C. §133 provides:

35 U.S.C. §133 Time for prosecuting application.

Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

[3] Therefore, by example, an unintentional delay in the reply might occur if the reply and transmittal form are to be prepared for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely deposited for shipment.

CONCLUSION

Accordingly, the petition pursuant to 37 C.F.R. §1.137(b) is **granted**.

The instant application is released to the Publications Branch to be processed into a patent in in due course.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the instant decision to ensure that the revival has been acknowledged by the Publications Branch in response to this decision. It is noted that all inquiries with regard to status need be directed to the Publications Branch where that change of status must be effected—that does not occur in the Office of Petitions.

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2[4]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

/John J. Gillon, Jr./
John J. Gillon, Jr.
Senior Attorney
Office of Petitions

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[4] The regulations at 37 C.F.R. §1.2 provide:

§1.2 Business to be transacted in writing.
All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

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K&L Gates LLP
P.O. Box 1135
CHICAGO IL 60690

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OFFICE OF PETITIONS

In re Application of:
Anthony J. Baerlocher
Application No. 11/557843
Filing or 371(c) Date: 11/08/2006
Atty. Docket No.:
3718611-03534

: ON REQUEST FOR
: RECONSIDERATION
: PATENT TERM ADJUSTMENT

This letter is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT," filed June 14, 2010. The Letter is properly treated as an Application for Patent Term Adjustment under 37 C.F.R. § 1.705(b).

The application for patent term adjustment is **GRANTED**.

The Office has updated the PALM and PAIR screens to reflect that the Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is one hundred fifty-two **(152)** days. A copy of the updated PALM screen, showing the correct determination, is enclosed.

On March 16, 2010, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is five hundred forty-five **(545)** days.

On June 14, 2010, applicant timely submitted the present application for patent term adjustment[1]. Applicants do not dispute the adjustment of 545 days pursuant to 37 CFR 1,702(a)(1). Applicants, however, direct the Office's attention to the pre-examination period beginning with the Notice to File Missing Parts of Nonprovisional Application, mailed on December 14, 2006, and ending with the petition decision granting the petition to revive the application, mailed on March 13, 2008. Applicants provide that the Office failed to calculate a reductions of 392 days pursuant to 37 CFR 1.704(c)(3) in connection with the abandonment and revival of the present application.

Regarding the reduction of 392 days, a review of the application file history reveals that the application became abandoned for failure to reply to the Notice to File Missing Parts of

[1] Office records show that the Issue Fee payment was received in the Office on June 15, 2010.

Nonprovisional Application, mailed on December 14, 2006, on February 15, 2007. Applicants filed a grantable petition to revive and a reply on December 3, 2007, which was granted in a decision mailed March 13, 2008. The period of reduction pursuant to 37 CFR 1.704(c)(3), is calculated beginning on the date of abandonment, February 15, 2007, and ending on the date of mailing of the decision reviving the application, March 13, 2008, or 393 days[2]. (Emphasis supplied).

In view thereof, the patent term adjustment at the time of the mailing of the notice of allowance is one hundred fifty-two **(152)** days.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Publications Division for issuance of a patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to Attorney Derek L. Woods at (571) 272-3232.

Anthony Knight
Director
Office of Petitions

Enclosure: Copy of Adjustment PAIR Calculations

[2] Pursuant to 37 CFR 1.704(c)(4), a reduction of 51 days, beginning on the day after the date two months from the mailing date of the Notice of Abandonment, August 15, 2007, and ending on the date a petition to revive the application was filed, October 5, 2007, is properly assessed Applicant. However, the period of reduction pursuant to 37 CFR 1.704(c)(4), overlaps with the period of reduction pursuant to 37 CFR 1.704(c)(3).

PTA/PTE Information | Patent Term Adjustment | Patent Term Extension

Application Number*: 11557843 Search Explanation of PTA Calculation Explanation of PTE Calculation

PTA Calculations for Application: 11557843

Application Filing Date	11/08/2006	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays:	545
A Delays	545	PTO Manual Adjustment	-393
B Delays	0	Applicant Delay (APPL)	0
C Delays	0	Total PTA (days)	152

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
85	10/21/2010		P028	Adjustment of PTA Calculation by PTO		393	0
77	03/16/2010		MN/=.	Mail Notice of Allowance			0
75	03/02/2010		IREV	Issue Revision Completed			0
74	03/02/2010		DVER	Document Verification			0
73	03/02/2010		N/=.	Notice of Allowance Data Verification Completed			0
76	03/01/2010		FIDC	Finished Initial Data Capture			0
72	03/01/2010		CNTA	Notice of Allowability			0
64	02/02/2010		ABN9	Disposal for a RCE / CPA / R129			0
71	01/26/2010		IDSC	Information Disclosure Statement considered			0
66	01/26/2010		EIDS.	Electronic Information Disclosure Statement			0
65	01/26/2010		RCEX	Request for Continued Examination (RCE)			0
63	01/26/2010		WIDS	Information Disclosure Statement (IDS) Filed			0
62	01/26/2010		BRCE	Workflow - Request for RCE - Begin			0
61	01/12/2010		EIDC	Export to Initial Data Capture			0
60	01/12/2010		ELC_RVW	Electronic Review			0
59	01/12/2010		EML_NTF	Email Notification			0
58	01/12/2010		MN/=.	Mail Notice of Allowance			0
55	12/18/2009		N/=.	Notice of Allowance Data Verification Completed			0
57	12/17/2009		IREV	Issue Revision Completed			0
56	12/17/2009		DVER	Document Verification			0
54	12/07/2009		CNTA	Notice of Allowability			0
46	11/04/2009		FWDX	Date Forwarded to Examiner			0
53	09/23/2009		IDSC	Information Disclosure Statement considered			0
48	09/23/2009	09/23/2009	M844	Information Disclosure Statement (IDS) Filed			45
47	09/23/2009		RCAP	Reference capture on IDS			0
45	09/23/2009		A...	Response after Non-Final Action			0
44	09/23/2009		WIDS	Information Disclosure Statement (IDS) Filed			0
43	07/06/2009		ELC_RVW	Electronic Review			0
42	07/06/2009		EML_NTF	Email Notification			0
39	07/06/2009	01/08/2008	MCTNF	Mail Non-Final Rejection	545		-1
41	07/03/2009		EML_NTR	Email Notification			0
40	07/02/2009		PG-ISSUE	PG-Pub Issue Notification			0
38	07/01/2009		CTNF	Non-Final Rejection			0
34	06/17/2009		DOCK	Case Docketed to Examiner in GAU			0
33	05/28/2009		DOCK	Case Docketed to Examiner in GAU			0
29	04/03/2009		OIPE	Application Dispatched from OIPE			0
28	03/23/2009		ELC_RVW	Electronic Review			0
27	03/23/2009		EML_NTR	Email Notification			0
26	03/23/2009		EML_NTF	Email Notification			0
24	03/23/2009		MPEN	Mail Pre-Exam Notice			0
23	03/23/2009		FLRCPT.U	Filing Receipt - Updated			0
25	03/20/2009		PGPC	Sent to Classification Contractor			0
35	08/22/2008		IDSC	Information Disclosure Statement considered			0
19	08/22/2008		M844	Information Disclosure Statement (IDS) Filed			0
16	08/22/2008		WIDS	Information Disclosure Statement (IDS) Filed			0
36	06/24/2008		IDSC	Information Disclosure Statement considered			0
32	06/24/2008		M844	Information Disclosure Statement (IDS) Filed			0
18	06/24/2008		RCAP	Reference capture on IDS			0
17	06/24/2008		M844	Information Disclosure Statement (IDS) Filed			0
15	06/24/2008		WIDS	Information Disclosure Statement (IDS) Filed			0
14	03/14/2008		EML_NTR	Email Notification			0
22	03/13/2008		ADDFLFEE	Additional Application Filing Fees			0
21	03/13/2008		OATHDECL	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic			0
13	03/13/2008		MPREV	Mail-Petition to Revive Application - Granted			0
12	03/12/2008		PREV	Petition to Revive Application - Granted			0
10	12/12/2007		EML_NTR	Email Notification			0
9	12/11/2007		MPTDI	Mail-Petition Decision - Dismissed			0
8	12/10/2007		PTDI	Petition Decision - Dismissed			0
11	12/03/2007		PET.	Petition Entered			0
7	10/05/2007		PET.	Petition Entered			0
20	08/15/2007		WPABN	Withdraw Pre-Exam Abandon			0
37	05/01/2007		IDSC	Information Disclosure Statement considered			0
31	05/01/2007		RCAP	Reference capture on IDS			0
30	05/01/2007		M844	Information Disclosure Statement (IDS) Filed			0
5	05/01/2007		WIDS	Information Disclosure Statement (IDS) Filed			0
6	02/15/2007		ABNX	Abandonment -- During Preexam Processing			0
4	12/14/2006		INCD	Notice Mailed--Application Incomplete--Filing Date Assigned			0
3	12/08/2006		L194	Cleared by OIPE CSR			0
2	12/03/2006		SCAN	IFW Scan & PACR Auto Security Review			0
1	11/08/2006		IEXX	Initial Exam Team nn			0

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K&L Gates LLP
P.O. Box 1135
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In re Application of
Jensen et al.
Application No. 11/557,865
Filed: November 8, 2006
Dkt. No.: 3718611-03482
For: GAMING DEVICE HAVING EXPANDING AND ROLLING WILD SYMBOLS

: DECISION ON APPLICATION FOR
: PATENT TERM ADJUSTMENT

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR § 1.705(b)," filed December 12, 2011. Applicants submit that the correct patent term adjustment to be indicated on the patent is seven hundred forty-one (741) days, not seven hundred sixty-nine (769) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by 741 days is **GRANTED**.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

Applicants contend an additional reduction of 28 days is warranted for the submission of a supplemental response in the form of information disclosure statement submitted on March 4, 2011.

A review of the record shows that an additional 28 day reduction for the submission of the information disclosure statement on March 4, 2011 was warranted. 37 CFR §1.704(c)(8) provides that a period of reduction is entered for:

Circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:

(8) Submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner,

after a reply has been filed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed;

Further, a review of the IDS filed, confirms that patentees did not include a statement under 37 CFR 1.704(d). In this instance, the 28 day delay is calculated beginning on February 5, 2011 the day after the submission of the response to the Office action on February 4, 2011 and ends on March 4, 2011 the day the supplemental reply, in this instance the IDS was submitted. A 28 day reduction will be entered.

Applicants' delay as of the mailing of the Notice of Allowance total is 56 days. Office delay as of the mailing of the Notice of Allowance total is 797 days.

In view thereof, the correct determination of PTA at the time of the mailing of the notice of allowance is seven hundred forty-one **(741)** days.

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and **must** include payment of the required fee under 37 CFR 1.18(e).

The application file is being forwarded to the Office of Data Management for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3215.

Charlema Grant

Charlema Grant
Attorney Advisor
Office of Petitions

Enclosure: Copy of REVISED PALM Screen

Patent Term Adjustments

PTA/PTE Information | Patent Term Adjustment | Patent Term Extension

Application Number*: 11557865 Search | Explanation of PTA Calculation | Explanation of PTE Calculation

PTA Calculations for Application: 11557865

Application Filing Date	11/08/2006	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays:	797
A Delays	797	PTO Manual Adjustment	-28
B Delays	0	Applicant Delay (APPL)	28
C Delays	0	Total PTA (days)	741

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
84	12/18/2011		P028	Adjustment of PTA Calculation by PTO		28	0
79	11/16/2011	06/04/2011	MN/=.	Mail Notice of Allowance	165		62
78	11/10/2011		OAR	Office Action Review			0
75	11/08/2011		OAR	Office Action Review			0
74	11/08/2011		N/=.	Notice of Allowance Data Verification Completed			0
73	11/08/2011		IREV	Issue Revision Completed			0
72	11/08/2011		DVER	Document Verification			0
71	11/07/2011		CNTA	Allowability Notice			0
68	03/04/2011		IDSC	Information Disclosure Statement considered			0
67	03/04/2011		EIDS.	Electronic Information Disclosure Statement			0
66	03/04/2011		WIDS	Information Disclosure Statement (IDS) Filed			0
64	02/08/2011		FWDX	Date Forwarded to Examiner			0
61	02/08/2011		ABN9	Disposal for a RCE / CPA / R129			0
63	02/04/2011		AMSB	Amendment Submitted/Entered with Filing of CPA/RCE			0
62	02/04/2011		RCEX	Request for Continued Examination (RCE)			0
60	02/04/2011		BRCE	Workflow - Request for RCE - Begin			0
59	01/31/2011		EML_NTR	Email Notification			0
58	01/31/2011		MEXIN	Mail Examiner Interview Summary (PTOL - 413)			0
57	01/18/2011		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
56	11/08/2010		ELC_RVW	Electronic Review			0
55	11/08/2010		EML_NTF	Email Notification			0
54	11/08/2010		MCTFR	Mail Final Rejection (PTOL - 326)			0
53	11/03/2010		CTFR	Final Rejection			0
49	10/14/2010		FWDX	Date Forwarded to Examiner			0
46	10/13/2010		DOCK	Case Docketed to Examiner in GAU			0
52	10/08/2010		IDSC	Information Disclosure Statement considered			0
51	10/08/2010		RCAP	Reference capture on IDS			0
50	10/08/2010	10/08/2010	M844	Information Disclosure Statement (IDS) Filed			48
48	10/08/2010	09/10/2010	A...	Response after Non-Final Action		28	42
47	10/08/2010		XT/G	Request for Extension of Time - Granted			0
45	10/08/2010		WIDS	Information Disclosure Statement (IDS) Filed			0
44	06/10/2010		ELC_RVW	Electronic Review			0
43	06/10/2010		EML_NTF	Email Notification			0
42	06/10/2010		MCTNF	Mail Non-Final Rejection			0
41	06/07/2010		CTNF	Non-Final Rejection			0
38	03/24/2010		FWDX	Date Forwarded to Examiner			0
37	03/02/2010		ELC.	Response to Election / Restriction Filed			0
36	03/02/2010		EML_NTR	Email Notification			0
35	03/02/2010		MEXIN	Mail Examiner Interview Summary (PTOL - 413)			0
34	02/22/2010		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
33	02/08/2010		ELC_RVW	Electronic Review			0
32	02/08/2010		EML_NTF	Email Notification			0
31	02/08/2010		MCTRS	Mail Restriction Requirement			0
30	02/02/2010		CTRS	Restriction/Election Requirement			0
29	11/30/2009		FWDX	Date Forwarded to Examiner			0
28	10/30/2009		ELC.	Response to Election / Restriction Filed			0
27	10/01/2009		ELC_RVW	Electronic Review			0
26	10/01/2009		EML_NTF	Email Notification			0
25	10/01/2009	01/08/2008	MCTRS	Mail Restriction Requirement	632		0.5
24	09/28/2009		CTRS	Restriction/Election Requirement			0
23	11/03/2008		DOCK	Case Docketed to Examiner in GAU			0
22	09/18/2008		DOCK	Case Docketed to Examiner in GAU			0
39	08/22/2008		IDSC	Information Disclosure Statement considered			0
20	08/22/2008		RCAP	Reference capture on IDS			0
19	08/22/2008		M844	Information Disclosure Statement (IDS) Filed			0

18	08/22/2008	WIDS	Information Disclosure Statement (IDS) Filed	0
21	08/12/2008	LET.	Miscellaneous Incoming Letter	0
17	05/09/2008	EML_NTR	Email Notification	0
16	05/08/2008	PG-ISSUE	PG-Pub Issue Notification	0
15	10/17/2007	W525	Withdraw Flagged for 5/25	0
14	10/15/2007	F525	Flagged for 5/25	0
40	09/24/2007	IDSC	Information Disclosure Statement considered	0
13	09/24/2007	RCAP	Reference capture on IDS	0
12	09/24/2007	M844	Information Disclosure Statement (IDS) Filed	0
11	09/24/2007	WIDS	Information Disclosure Statement (IDS) Filed	0
10	01/18/2007	DOCK	Case Docketed to Examiner in GAU	0
9	01/15/2007	TSSCOMP	IFW TSS Processing by Tech Center Complete	0
8	01/03/2007	OIPE	Application Dispatched from OIPE	0
7	01/03/2007	COMP	Application Is Now Complete	0
6	12/27/2006	ADDFLFEE	Additional Application Filing Fees	0
5	12/27/2006	OATHDECL	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic	0
3	12/12/2006	L194	Cleared by OIPE CSR	0
2	12/05/2006	SCAN	IFW Scan & PACR Auto Security Review	0
1	11/08/2006	IEXX	Initial Exam Team nn	0
0.5	11/08/2006	EFILE	Filing date	0

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