PTO/SB/66 (03-09)
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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)
5559759	1996-09-24	08352874	1994-12-09	

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

A Joint Patentee and I certify that I am authorized to sign this submission on behalf of all the other patentees			
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	/Edmund R. Gerstein/	Date (YYYY-MM-DD)	2009-08-20
Name	Edmund R. Gerstein		

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

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

In re Patent No. 5559759
Issue Date: September 24,1996
Application No. 08352874
Filed: December 9,1994
Attorney Docket No. GEREPA0194

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed August 20,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 20,2009 . 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

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

Paper No. 25

ANDREW J DILLON
FELSMAN BRADLEY
GUNTER & DILLON,LLP
SUITE 350,
LAKEWOOD ON THE PARK
7600B NORTH CAPITAL OF TEXAS
HIGHWAY
AUSTIN TX 78731

COPY MAILED

JUL 09 2007

OFFICE OF PETITIONS

In re Application of :
Timothy Skergan : DECISION ON PETITION
Application No. 08/353,008 :
Filed: December 9, 1994 :
Attorney Docket No. AT993110 :

This is a decision on the "PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR §1.137(b)," filed April 2, 2007.

By Notice of Abandonment mailed November 30, 2001, applicant was advised that the application was abandoned as a result of failure to take appropriate action in a timely manner after the decision rendered on June 19, 2001 (not May 19, 2001 as stated in the notice) by the Board of Patent Appeals and Interferences. Therefore, the proceedings as to the rejected claims were terminated. See 37 CFR 1.197(c). The notice stated as no claim was considered allowed, the application became abandoned.

Petitioner states they did not respond to the notice because claims did stand allowed. Thus, the application was not abandoned and should have passed to issue on the allowed claims 6-9.

It is noted that 37 CFR § 1.197(b) provides that:

> (1) Proceedings on an application are considered terminated by the dismissal of an appeal or the failure to timely file an appeal to the court or a civil action (§ 1.304) except:
> (i) Where claims stand allowed in an application; or
> (ii) Where the nature of the decision requires further action by the examiner.

A review of the decision of the board confirms that the decision of the examiner rejecting claims 6 through 9 were reversed. On August 17, 2001, applicants filed an amendment directed to claims other than 6 through 9. On September 10, 2001, the examiner responded to that amendment. However, with respect to claims 6 through 9, no further action has been taken. Given the decision by the Board as to claims 6 through 9, further action by the examiner was required. See MPEP § 1214.06.

However, it is noted that the instant application was filed on December 9, 1994, and the instant petition was filed on April 2, 2007, more than 5 years after the mailing of the notice of abandonment on November 30, 2001. As stated in MPEP 711.03(c),

> 37 CFR 1.137(d) requires, in pertinent part, that a petition under either 37 CFR 1.137(a) or 1.137(b) be accompanied by a terminal disclaimer (and fee), regardless of the period of abandonment, in:
> ...
> (B) a nonprovisional utility application (other than a reissue application) filed before June 8, 1995

> Alternatively, 37 CFR 1.181(f) also 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 CFR 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 CFR 1.181(f).

> Rather than dismiss an untimely petition to withdraw the holding of abandonment under 37 CFR 1.181(f), the Office may require a terminal disclaimer as a condition of

granting an untimely petition to withdraw the holding of abandonment.

Under the circumstances of this application, the Office is requiring a terminal disclaimer. The period to be disclaimed is the terminal part of the term of any patent granted on the application, or of any patent granted on any utility or plant application that claims the benefit of the filing date of the application under 35 U.S.C. 120, 121, or 365(c), equivalent to the period between:

(A) the date that is two months after the mail date of the notice of abandonment; and

(B) the filing date of a grantable petition to withdraw the holding of abandonment.

Form PTO/SB/62 is the appropriate terminal disclaimer to be used, available at www.uspto.gov.

Petitioner filed a terminal disclaimer with this petition. However, a review of the terminal disclaimer reveals that it is improper. It does not disclaim the proper period, as set forth above. It states that applicant is disclaiming the lesser period of the period of abandonment of the application and thus, the period to be disclaimed should be zero (0) days. A proper terminal disclaimer (and fee) is required.

In view thereof, 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 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)."

Receipt of a change of correspondence address filed April 2, 2007 is acknowledged. However, the change of correspondence address will not be entered as the filing attorney, James Boice, is not an attorney of record in this application. A courtesy copy of this decision is being mailed to the address on the petition. All future correspondence will be mailed to the current correspondence address of record until such time as a proper change of correspondence address is filed.

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

It is noted that the petition includes authorization to charge the Issue Fee and Publication Fee. Aside from the fact that the application remains abandoned, no Notice of Allowance or Notice of Allowability has been issued in this application. Applicants must file a response to any Notice of Allowance or Notice of Allowability within the statutory period for reply. Otherwise, the application will be abandoned. Applicant cannot rely on the response filed on petition as a response to any future Notice of Allowance or Notice of Allowability.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

cc: BRIAN F. RUSSELL
DILLON & YUDELL LLP
8911 N. CAPITAL OF TEXAS HWY
SUITE 2110
AUSTIN TX 78759

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

Paper No. 29

BRIAN F. RUSSELL
DILLON & YUDELL LLP
8911 N. CAPITAL OF TEXAS HWY
SUITE 2110
AUSTIN TX 78759

COPY MAILED

FEB 0 6 2008

OFFICE OF PETITIONS

In re Application of :
Timothy Skergan : DECISION ON PETITION
Application No. 08/353,008 :
Filed: December 9, 1994 :
Attorney Docket No. AT993110 :

This is a decision on the "RENEWED PETITION FOR REVIVAL UNDER 37 C.F.R. § 1.137(b)" filed July 16, 2007.

The petition is **GRANTED**.

By Notice of Abandonment mailed November 30, 2001, applicant was advised that the application was abandoned as a result of failure to take appropriate action in a timely manner after the decision rendered on June 19, 2001 (not May 19, 2001 as stated in the notice) by the Board of Patent Appeals and Interferences. Therefore, the proceedings as to the rejected claims were terminated. See 37 CFR 1.197(c). The notice stated as no claim was considered allowed, the application became abandoned.

On initial petition, petitioner stated that they did not respond to the notice because claims did stand allowed. Thus, the application was not abandoned and should have passed to issue on the allowed claims 6-9.

By decision mailed July 9, 2007, the initial PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR §1.137(b) filed April 2, 2007 was noted. It was noted that further action was required by the examiner with respect to claims 6 through 9.

More importantly, the instant application was filed on December 9, 1994, and the instant petition was filed on April 2, 2007, more than 5 years after the mailing of the notice of abandonment on November 30, 2001. As stated in MPEP 711.03(c),

> 37 CFR 1.137(d) requires, in pertinent part, that a petition under either 37 CFR 1.137(a) or 1.137(b) be accompanied by a terminal disclaimer (and fee), regardless of the period of abandonment, in:
>
> ...
>
> (B) a nonprovisional utility application (other than a reissue application) filed before June 8, 1995
>
> Alternatively, 37 CFR 1.181(f) also 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 CFR 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 CFR 1.181(f).
>
> Rather than dismiss an untimely petition to withdraw the holding of abandonment under 37 CFR 1.181(f), the Office may require a terminal disclaimer as a condition of granting an untimely petition to withdraw the holding of abandonment.

Accordingly, a terminal disclaimer was required. It was further noted that the terminal disclaimer filed April 2, 2007 (with the disclaimer fee) was not proper.

On instant renewed petition, applicants filed a proper terminal disclaimer signed by an attorney of record.

It is undisputed that the instant petition was filed more than five years after this application was deemed abandoned and a notice of abandonment was mailed. This is substantially beyond

the two-month period for timely filing a petition to withdraw the abandonment. Moreover, it is undisputed that the instant application was filed prior to June 8, 1995. Accordingly, under the circumstances, regardless of the propriety of the original determination of abandonment, entry of a terminal disclaimer is appropriate for revival of this application (or for withdrawal of the holding of abandonment). Petitioner has also paid the petition fee for revival and made the required statement of unintentional delay. Moreover, petitioner has stated the specific circumstances of the entire delay to support a conclusion that the abandonment was unintentional. Applicant previously met the required reply element by taking appropriate action in response to the Board Decision. No action was required on the part of applicant.

In view thereof, the petition to revive is **GRANTED**.

Receipt of the change of correspondence address filed July 16, 2007 is acknowledged and made of record.

The application is being forwarded to the Technology Center's technical support staff for processing of the Terminal Disclaimer filed July 16, 2007 (Paper No. 27) and for further action by the examiner consistent with this decision. The examiner's attention is directed to the Board Decision of June 19, 2001.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:

DATE : 11/8/07

TO SPE OF : ART UNIT 1648

SUBJECT : Request for Certificate of Correction on Patent No.: 5,626,851

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:

BRUCE R. CAMPELL, PH.D
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

SPE: Bruce Campell 1648 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

In re Patent No. 5612125
Issue Date: March 18,1997
Application No. 08354268
Filed: December 12,1994
Attorney Docket No. 18840200XFWC

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed October 25,2006 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 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 October 25,2006 . 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 an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

Telephone inquires related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

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)
5612125	1997-03-18	08354268	1994-12-12	149353USMF

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

	Fee	Code
○	3 ½ year	(1551)
◉	7 ½ year	(1552)
○	11 ½ year	(1553)

Small Entity

	Fee	Code
○	3 ½ year	(2551)
○	7 ½ year	(2552)
○	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

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	/C. Irvin McClelland/	Date (YYYY-MM-DD)	2006-10-26
Name	C. Irvin McClelland	Registration Number	21124

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 record s.

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

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

In re Patent No. 5620379
Issue Date: April 15,1997
Application No. 08354845
Filed: December 9,1994
Attorney Docket No. 82445102MET

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed April 16,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 April 16,2009 . 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.

DATE : March 4, 2002 Paper No.: 13

J. Trammell 2161

TO : Supervisor, Art Unit 2414

SUBJECT : Certificate of Correction Request in Patent No.: 5,633,811

A response to the following question is requested with respect to the accompanying request for a certificate of correction.

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.

Magdalene Talley

PLEASE COMPLETE THIS FORM AND RETURN WITH FILE, WITHIN 7 DAYS, TO CERTIFICATES OF CORRECTION BRANCH - PK 3-915/922 PALM LOCATION 7580 - TEL. NO. 305-8309

THANK YOU FOR YOUR ASSISTANCE!

Note your decision, regarding the changes requested in the Request for Certificate of Correction, by placing a check mark (✓) in the box that reflects your decision, which corresponds to the question checked above.

☒ **YES** ☐ **NO** ☐ **Comments below**

☐ **Comments:**

2161

Supervisor **Art Unit**

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)
5584086	1996-12-17	08356448	1994-12-14	

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

The Assignee of record of the entire interest			
Under 37 CFR 3.71 an assignee becomes of record by filing a statement in compliance with 37 CFR 3.73(b). Signature requirements are set forth in 37 CFR 1.4(d), and the undersigned certifies that he / she is empowered to act on behalf of the assignee of the entire interest			
Signature	/PJ Nora/	Date (YYYY-MM-DD)	2009-03-02
Name	PJ Nora		
Enter Reel and Frame Number		Remove	
Reel Number	000005	Frame Number	0644
Click ADD for additional Reel Number and Frame Number		Add	

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 record s.

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

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

In re Patent No. 5584086
Issue Date: December 17,1996
Application No. 08356448
Filed: December 14,1994
Attorney Docket No. 108494A1

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed March 2,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 March 2,2009 . 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

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

Paper No.

PICK ENTERPRISES, INC.
ATTN: RODNEY HORN, PRES.
4208 HENRY S. GRACE FRWY
WICHITA FALLS, TX 76302

COPY MAILED

MAY 15 2006

OFFICE OF PETITIONS

Patent No. 5,718,245 :
Issue Date: February 17, 1998:
Application No. 08/358,408 : DECISION ON PETITION
Filed: December 19, 1994 :
Title: FIRST AID TREATMENT :
INCORPORATING UNVERSAL :
PRECAUTIONS AND CONTAINMENT OF:
INFECTIOUS BODY FLUIDS :

This is a decision on the petition, filed April 12, 2006, under 37 CFR 1.378(c) to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The patent issued February 17, 1998. Office records indicate that the first maintenance fee was timely filed. The grace period for paying the 7-½ year maintenance fee provided in 37 CFR 1.362(e) expired at midnight on February 17, 2006, with no payment received.

This petition was timely filed within twenty-four months after the expiration of the six-month grace period. As required, petitioner submitted with the petition the required maintenance fee, the surcharge for accepting an unintentionally delayed maintenance fee after expiration, and a statement that the delay in payment of the maintenance fee was unintentional. These fees were accepted at the reduced small entity rate, as the fees were accompanied by petitioner's assertion of having made a determination of continued entitlement to pay small entity fees, pursuant to new 37 CFR 1.27(g)(1), effective September 8, 2000.

Accordingly, the maintenance fee in this case is hereby accepted and the above-identified patent is hereby reinstated as of the mail date of this decision.

Receipt of the change of correspondence address is acknowledged and made of record.

Telephone inquiries related to this decision may 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

In re Patent No. 5511579
Issue Date: April 30,1996
Application No. 08359053
Filed: December 19,1994
Attorney Docket No. TDTINC.002CP

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed July 6,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 July 6,2008 . 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 an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

Telephone inquires related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

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)
5511579	1996-04-30	08359053	1994-12-19	TDTINC.002CP

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

Sole Patentee			
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	/William D Price/	Date (YYYY-MM-DD)	2008-07-06
Name	William D Price		

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.**

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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 record s.

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

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Paper No. ~~25~~ 33

AKIN GUMP STRAUSS HAUER & FELD
ONE COMMERCE SQUARE
2005 MARKET STREET - 22ND FLOOR
PHILADELPHIA, PA 19103-7086

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DEC 04 2002

OFFICE OF PETITIONS

In re Patent No. 5,707,644	:	
Issue Date: January 13, 1998	:	
Application No. 08/359,937	:	NOTICE
Filed: December 20, 1994	:	
Attorney Docket No. 10774-8U2 (WESX /P7482US/M6512)	:	

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.**

Inquiries related to this communication should be directed to the Office of Petitions Staff at (703) 305-9285.

This file is being forwarded to Files Repository.

Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Paper No. ~~27~~ 35

AKIN GUMP STRAUSS HAUER & FELD
ONE COMMERCE SQUARE
2005 MARKET STREET - 22ND FLOOR
PHILADELPHIA, PA 19103-7086

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JAN 23 2003

OFFICE OF PETITIONS

In re Application of :
Lisbeth Illum :
Application No. 08/065,676 (FWC) : NOTICE
Filed: May 21, 1993 :
Attorney Docket No. 10774-8U2WESX/ :
P7482US/M6512) :

This is a supplemental 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.**

Inquiries related to this communication should be directed to the Office of Petitions Staff at (703) 305-9285.

This file is being forwarded to Files Repository.

Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

SCAN! **Please forward case and paper to address shown below.**

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 2/26/08

TO SPE OF : ART UNIT 1652 Spe Achutamurthy Ponnathapura (Murthy) N

SUBJECT : Request for Certificate of Correction for Appl. No.: 08/361306 Patent No.: 7094530

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

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)
South Tower - 9A22
Palm Location 7580

HENRY RANDALL
Certificates of Correction Branch
703-308-9390 ext. _____

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: change is not an obvious error and would require further search + consideration

[signature] 1652
SPE Art Unit

PTOL-306 (REV. 7/03) U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY OF COMMERCE AND
COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, DC 20231

7/8/04

Patent No. :7094530
Inventor(s) : Sasaki Katsutoshi
Issued : 1/23/2007
Title : ALPHA-1,3-FUCOSYLTRANSFERASE
Atty.doc./File No.

Request for Certificates of Correction

Consideration has been given to your request for the issuance of a Certificate of Correction, for the above – identified patent under the provisions of CFR 1.322.

Inspection of the application for the patent reveals that change is not an obvious error and would require further search and consideration. Therefore being no fault on the Patent and Trademark Office, It has no authority to issue a certificate of correction under the provision of 1.322.

In view of the forgoing, your request in this matter, is hereby denied.

Future written correspondence concerning this matter should be filed and directed to Decisions & Certificates of Correction Branch.

Henry Randall
Cecelia Newman
Decisions & Certificates
of Correction Branch
(703) 308-9390 Ext. 108

NIXON &VADERHYE, PC
901 North Glebe Road, 11th Floor
Arlington, VA 22203

HR/CBN

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

ANTONELLI, TERRY, STOUT & KRAUS, LLP
1300 NORTH SEVENTEENTH STREET
SUITE 1800
ARLINGTON, VA 22209

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JUN 28 2007

OFFICE OF PETITIONS

In re Patent No. 5,751,381	:
Issue Date: May 12, 1998	:DECISION GRANTING PETITION
Application No. 08/361,363	: UNDER 37 CFR 1.378(c)
Filed: December 21, 1994	:
Attorney Docket No. 501.33449X00	:

This is a decision on the petition under 37 CFR 1.378(c), electronically received on June 22, 2007, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent. In view of the evidence submitted, the petition will be treated as having been received on February 27, 2007. Also, Office finance records show that the maintenance and reinstatement surcharge fees were received on February 27, 2007.

The petition is GRANTED.

The patent issued May 12, 1998. The grace period for paying the second maintenance fee expired at midnight on May 12, 2006. Therefore, since this petition was filed within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), this petition was timely filed under the provisions of 37 CFR 1.378(c).

Accordingly, the maintenance fee in this case is hereby accepted and the above-identified patent is hereby reinstated as of the mail date of this decision.

If petitioner desires to receive future correspondence related to maintenance fees which may be mailed in the above-identified patent, a "fee address" (see PTO/SB/47) should be submitted.

Petitioner has submitted an unintentional petition fee of $1,500; whereas, the required fee for acceptance of an unintentionally delayed payment of a maintenance fee is $1,640. Therefore, the $1,500 overpayment will be refunded to petitioner's credit card.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3218.

Frances Hicks
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov

Paper No. 33

NIXON & VANDERHYE P.C.
1100 NORTH GLEBE ROAD, 8TH FLOOR
ARLINGTON, VA 22201-4714

COPY MAILED

FEB 14 2001

OFFICE OF PETITIONS
A/C PATENTS

In re Application of :
MAERTENS ET AL :
Application No. 08/362,455 : ON PETITION
Filed: January 11, 1995 :
Attorney Docket No. 2752-3 :

This is a decision on the petition, filed January 11, 2001, 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).

Telephone inquiries should be directed to the undersigned at (703) 305-8859.

The application is being forwarded to Technology Center 1600 for processing of the request for continued examination under 37 CFR 1.114.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Paper No. 45

NIXON AND VANDERHYE
8TH FLOOR
1100 NORTH GLEBE ROAD
ARLINGTON VA 22201-4714

COPY MAILED

APR 16 2002

OFFICE OF PETITIONS

In re Application of :
Maertens et al. :
Application No. 08/362455 : ON PETITION
Filed: January 11, 1995 :
Attorney Docket No. 1487-4 :

This is a decision on the communications filed October 30, 2001, which are being treated as (1) a request for extraordinary relief under 37 CFR 1.183 and waiver of the rules, and (2) withdrawal of the above-identified application from issue under 37 CFR 1.313(c)(3) and abandonment in favor of the CPA filed on the same date as the petition.

The petitions are **GRANTED**.

Inspection of the record reveal that a petition under 37 CFR 1.313 for withdrawal from issue after payment of the issue fee was filed January 11, 2001, in favor of a request for continued examination (RCE) under the provisions of 35 U.S.C. § 132(b) and 37 CFR 1.114, to have an IDS considered. Since the issue fee had been paid, and further, more than three months had passed since anyone involved with this application had first become aware of any of the art cited in the IDS, the IDS could not be considered by the examiner unless this application were withdrawn from issue, and prosecution reopened. While this application was filed before June 8, 1995, and, as such, this application did not meet the statutory and regulatory requirements for such continued examination under the rule, the petition was unfortunately granted on February 14, 2001. In due course the examiner considered the IDS and, without further amendment of the previously allowed claims, again passed this application to issue on May 7, 2001. However, on August 6, 2001 applicants were belatedly but correctly notified that the RCE request was improper.

Petitioner seeks clarification of the record, points to two amendments filed under the provisions of 37 CFR 1.312 on July 25, 2000, and June 11, 2001, the Examiner's Amendment of May 8, 2001, and a preliminary amendment filed with the CPA request accompanying the petition under 37 CFR 1.313.

Since the initial USPTO acceptance of the improper RCE request caused or contributed to petitioner's ongoing difficulties, the interests of justice would be served by waiver of the rules in this case. While the provisions of 37 CFR 1.114 may not be waived as they are also requirements of the statute, 37 CFR 1.97, 1.312, and 1.313 are waived such that the examiner's consideration of the IDS of January 11, 2001 is ratified. It is noted that this application does not qualify for the transitional practice of 37 CFR 1.129(a). Likewise, since a RCE request is not a demand for a new application, but merely seeks to continue the examination of the same application, the USPTO will not favorably entertain a petition for conversion of request filed under 37 CFR 1.114 into a request for e.g., an application filed under 37 CFR 1.53(d).

It follows that the CPA request filed with the instant petition is thus the first CPA request filed in this application which itself has a filing date before May 29, 2000, and as such, is a proper CPA request to accompany the current petition under 37 CFR 1.313(c)(3)..

5/7/01

This application is withdrawn from issue in favor of the CPA request filed October 30, 2001, under the provisions of 37 CFR 1.313(c)(3).

As a condition of waiver of the rules, the fees paid with the improper RCE request are accepted to offset the additional examination involved, and will not be refunded. See 37 CFR 1.183.

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-1210
$120

This application is being returned to Technology Center AU 1633 (TC) for processing of the CPA request and preliminary amendment filed October 30, 2001. The TC will correct PALM and file records to show that the RCE request of January 11, 2001 is being treated simply as part of the IDS submission which was already considered by the examiner. The decision of February 14, 2001 is corrected to the extent that this application was withdrawn from issue for consideration of the IDS in the absence of a RCE.

Telephone inquiries relevant to this decision should be directed to the undersigned at (703) 305-1820.

Brian Hearn
Senior Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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Paper No. 53

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1100 N GLEBE ROAD
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ARLINGTON, VA 22201-4714

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OFFICE OF PETITIONS

In re Application of	:	
Maertens et al.	:	
Application No. 08/362,455	:	
International Filing Date:	:	
April 27, 1994	:	
371 Date: January 11, 1995	:	DECISION ON PETITION
Attorney Docket No.	:	UNDER 37 CFR 1.137(b)
1487-4	:	

This is a decision in response to the Petition for Revival of an Application Abandoned Unintentionally Under 37 CFR 1.137(b), filed March 8, 2004 (Certificate of Mailing dated February 27, 2004.

This Petition is hereby **granted**.

Background

A first Notice of Allowance and Issue Fee Due and Notice of Allowability were mailed on May 8, 2000. In response to the Notice of Allowance and Issue Fee Due, Applicant paid the issue fee, $1210.00, on July 25, 2000, and filed an Amendment under 37 CFR 1.312, and in response to the Notice of Allowability, Applicant filed corrected formal drawings on September 8, 2000, along with a two (2) month extension of time request.

Applicant subsequently, on January 11, 2001, filed a petition to withdraw the application from issue under 37 CFR 1.313, for consideration of an Information Disclosure Statement (IDS), along with a Request for Continued Examination (RCE) under 37 CFR 1.114.

The petition was erroneously granted in a Decision mailed on February 14, 2001. The Examiner reopened the prosecution of the application and considered the IDS. On May 7, 2001, the Office mailed a second Notice of Allowance and Issue Fee Due, and a second Notice of Allowability.

The Office then mailed Applicant, on August 6, 2001, a Notice of Improper RCE. The Notice correctly stated that the RCE was Improper, and explained that 37 CFR 1.114 does not apply to applications filed before June 8, 1995[1].

In response to the Notice of Improper RCE, Applicant contacted this Office and was advised to file a request for continued prosecution application (CPA) under 37 CFR 1.53(d) and a request to withdraw the application from issue under 37 CFR 1.313(c)(3), which Applicant filed, along with a Request for Clarification, via facsimile on October 30, 2001. The Request for Clarification was treated as a petition requesting extraordinary relief under 37 CFR 1.183 and waiver of the rules, and as a petition to withdraw the application from issue under 37 CFR 1.313(c)(3). In the Decision on petition mailed April 16, 2002, the application was withdrawn from issue in favor of the CPA. Thereafter, the application was forwarded to the Technology Center for processing of the CPA.

The issue fee in response to the second Notice of Allowance and Issue Fee Due mailed on May 7, 2001, remained unpaid. The application therefore became abandoned on August 8, 2001, for failing to pay the issue fee.

Applicant files the instant petition to revive the application based upon an unintentional abandonment, and files a request to apply the issue fee of $1210.00, paid on July 25, 2000, in response to the first Notice of Allowance and Issue Fee Due, to the issue fee due in response to the second Notice of Allowance and Issue Fee Due.

The petition is hereby granted.

The application is being revived for continuity purposes only, and is again abandoned in favor of the CPA, filed October 30, 2001.

---

[1]This application is the National Stage of an International Application filed under 35 U.S.C. § 363 on April 27, 1994. The RCE was improper because the provisions of 37 CFR 1.114 do not apply to international applications filed under 35 U.S.C. 363 before June 8, 1995. See 37 CFR 1.114(e)(3).

The application is being forwarded to Technology Center Art Unit 1631 for further examination in due course.

Telephone inquiries concerning this matter should be directed to the undersigned at (703) 305-0014.

Derek L. Woods
Petitions Attorney
Office of Petitions

355
2551-105

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MAR 19 2003

B. J. SADOFF
NIXON & VANDERHYE P.C.
1100 NORTH GLEBE ROAD, 8TH FLOOR
ARLINGTON, VA 22201-4714

In re Application of
Geert Maertens et al
Serial No.: 08/836,075
Filed: April 21, 1997
Attorney Docket No.: 2752-31

: PETITION DECISION

This is a decision on the petition under 37 CFR 1.181, filed December 19, 2002, requesting removal of an improper restriction requirement.

BACKGROUND

A review of the pertinent portion of the file history shows that this application was allowed and the Issue Fee was paid prior to September, 1999. Through error the application was held abandoned in August, 2000, and the abandonment rescinded in December, 2000. In January, 2001, a petition under 37 CFR 1.313 accompanied by an RCE request and an IDS statement was filed. The petition was granted on January 26, 2001, which was too late to prevent publication of the patent, per se. By Notice in the Official Gazette indication was given that no patent had issued for the assigned number. The application was then returned to the examiner for further action.

Subsequently several additional IDS statements were submitted as well as an amendment. The examiner mailed an Office action to applicants on November 19, 2002, setting forth a two way restriction requirement, as follows:

> Group I, claims 75-84, drawn to unique polypeptides from differing HCV genomes;
> Group II, claim 85, drawn to a purified polypeptide.

In addition, the election of a single amino acid sequence was required irrespective of whichever group was elected. Applicants replied on December 19, 2002, electing Group I and SEQ ID NO. 43 with traverse. Applicants also filed this petition to have the restriction requirement withdrawn.

COPY

DISCUSSION

Applicants argue that all of the claims currently active in the application were prosecuted and allowed by the same examiner in June, 1999. Applicants have amended the claims only to cancel one dependent claim and to remove some of the sequence identifiers from the claims so as to avoid newly submitted prior art. Applicants argue that since all of the claims were previously considered together they should not be divided now. Applicants basically argue that the Office has been inconsistent in prosecution of this application and that the restriction requirement should be withdrawn.

It is also noted that this application is the National Phase filing of PCT/EP95/04155. As such the making of a restriction requirement solely under 35 U.S.C. 121 without consideration of PCT Rule 13 provisions is improper. As only RCE papers have been filed this application remains a National Phase application.

DECISION

Applicants' petition is **GRANTED.**

The restriction requirement of the last Office action is withdrawn. The application will be forwarded to the examiner for consideration of the response filed December 19, 2002.

Should there be any questions with respect to this decision, please contact William R. Dixon, Jr., by mail addressed to: Director, Technology Center 1600, Washington, D.C. 20231, or by telephone at (703)308-3824 or by facsimile transmission at (703) 305-7230.

John Doll

John Doll
Director, Technology Center 1600

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OFFICE OF PETITIONS

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ARLINGTON, VA 22203

In re Application of :
Maertens, et al. : DECISION ON APPLICATION
Application No. 08/362,455 : FOR PATENT TERM ADJUSTMENT
Filed: January 11, 1995 (CPA :
filed March 12, 2001) :
Atty. Dkt. No: 1487-4 :

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT 37 C.F.R. § 1.705(b)" filed June 2, 2006.

The application for patent term adjustment ("PTA") under 37 CFR 1.705(b) is hereby **GRANTED TO THE EXTENT INDICATED HEREIN**.

Applicants request that the Determination of Patent Term Adjustment be corrected from zero days, as indicated on the Determination of Patent Term Adjustment mailed March 2, 2006, to an adjustment of 463 days.

The correct patent term adjustment (PTA) at the time of the allowance is 464 days. The Office will adjust the PAIR screen to reflect that the PTA determination at the time of mailing of the Notice of Allowance reflects an adjustment of 464 days. A copy of the updated PAIR screen showing the correct determination is enclosed.

Applicants argue that the application is entitled to an adjustment of 463 days, including a adjustment of 246 days under 37 CFR 1.702(a)(1) and a reduction of 62 days under 37 CFR 1.704(b).

A review of the application history reveals that an Office action within the meaning of 37 CFR 1.132 was first mailed September 3, 2003. Thus, in accordance with 37 CFR 1.702(a)(1) and 1.703(a)(2), an adjustment of 247 days can be attributed to the Office. The adjustment began December 31, 2002, the day after the date that is 14 months from the date that the application was filed, and ended September 3, 2003, the date the Office communication under 37 CFR 1.132 was mailed.

A further adjustment of 370 days, as undisputed by applicants, can be attributed to the Office in accordance with 37 CFR 1.703(a)(2).

The adjustments totaling 617 days can be properly reduced a total of 153 days for applicants' failure to engage in reasonable efforts to conclude prosecution.

The adjustment is properly reduced 62 days, as argued by applicants, in accordance with 37 CFR 1.704(b). The reduction began December 4, 2003, the day after the date that is three months after the date that the restriction requirement was mailed, and ended February 3, 2004, the date a reply was submitted.

The adjustment is further properly reduced 91 days, as undisputed by applicants, in accordance with 37 CFR 1.704(b).

In view thereof, at the time of allowance, the application was entitled to an overall adjustment of 464 days.

The Office acknowledges receipt of the required $200.00 application fee.

The application file is being forwarded to the Office of Patent Publication for issuance of a patent.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Alesia M. Brown at (571) 272-3205.

Nancy Johnson for

Kery Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

PTA Calculations for Application: 08/362455			
Application Filing Date:	01/11/1995	PTO Delay (PTO):	370
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	411
Post-Issue Petitions:	0	Total PTA (days):	464
PTO Delay Adjustment:	505		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
158	11/21/2006	ADJUSTMENT OF PTA CALCULATION BY PTO		62	
157	11/21/2006	ADJUSTMENT OF PTA CALCULATION BY PTO	320		
156	11/21/2006	ADJUSTMENT OF PTA CALCULATION BY PTO	247		
133	03/02/2006	MAIL NOTICE OF ALLOWANCE			
132	03/02/2006	MAIL EXAMINER'S AMENDMENT			
131	02/28/2006	ISSUE REVISION COMPLETED			
130	02/28/2006	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
129	02/28/2006	EXAMINER'S AMENDMENT COMMUNICATION			
128	02/27/2006	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
127	02/28/2006	NOTICE OF ALLOWABILITY			
126	12/08/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
125	12/08/2005	REFERENCE CAPTURE ON IDS			
124	12/08/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		0	122
123	01/03/2006	DATE FORWARDED TO EXAMINER			
122	12/08/2005	RESPONSE AFTER NON-FINAL ACTION		91	117
121	12/08/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			
120	12/07/2005	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
119	12/01/2005	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
118	12/02/2005	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
117	06/08/2005	MAIL NON-FINAL REJECTION	370		113

116	06/06/2005	NON-FINAL REJECTION			
115	12/28/2004	CASE DOCKETED TO EXAMINER IN GAU			
114	07/15/2004	DATE FORWARDED TO EXAMINER			
113	02/03/2004	RESPONSE TO ELECTION / RESTRICTION FILED		320	104
112	02/03/2004	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
110	03/26/2004	PETITION TO REVIVE APPLICATION - GRANTED			
109	02/27/2004	PETITION ENTERED			
108	09/03/2003	MAIL NOTICE OF RESTARTED RESPONSE PERIOD			
107	08/25/2003	LETTER RESTARTING PERIOD FOR RESPONSE (I.E. LETTER RE: REFERENCES)			
106	01/21/2003	MISCELLANEOUS INCOMING LETTER			
105	01/28/2003	CORRESPONDENCE ADDRESS CHANGE			
104	12/20/2002	MAIL RESTRICTION REQUIREMENT			
103	12/19/2002	REQUIREMENT FOR RESTRICTION / ELECTION			
102	10/19/2002	DATE FORWARDED TO EXAMINER			
101	10/30/2001	CONTINUING PROSECUTION APPLICATION - CONTINUATION (ACPA)			
100	10/19/2002	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
99	09/04/2002	DATE FORWARDED TO EXAMINER			
98	09/04/2002	WITHDRAWAL OF NOTICE OF ALLOWANCE			
97	09/04/2002	CASE DOCKETED TO EXAMINER IN GAU			
96	08/21/2002	RECEIPT INTO PUBS			
92	08/19/2002	RECEIPT INTO PUBS			
91	06/20/2002	RECEIPT INTO PUBS			
90	04/25/2002	RECEIPT INTO PUBS			
89	04/16/2002	PETITION DECISION - GRANTED			
88	10/30/2001	PETITION ENTERED			
86	10/31/2001	PETITION FLAG SET AT PETITIONS OFFICE			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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MILLEN, WHITE, ZELANO & BRANIGAN, P.C.
2200 CLARENDON BLVD.
SUITE 1400
ARLINGTON VA 22201

In re Application of	:	
Ilka Van Hoegen et al	:	
Serial No.: 08/362,951	:	PETITION DECISION
Filed: December 23, 1994	:	
Attorney Docket No.: MERCK 1642	:	

This is in response to applicants' petition which is being treated under 37 CFR 1.181, filed October 31, 2002, seeking withdrawal of an improper holding of abandonment.

BACKGROUND

A review of the file history shows that the examiner mailed a Notice of Abandonment to applicants on March 12, 2002, holding the application as abandoned from the date of filing of the first CPA request, filed June 30, 1998. At the time of filing the CPA request it was not held as improper, nor was a second CPA request, filed September 29, 1999, held as improper. It was only subsequent to the filing of an RCE request on November 26, 2001, that the application was held as abandoned based on an improper CPA request. The examiner's reasoning for holding the CPA request improper and the application abandoned is that, as stated on the form, a CPA request may only be filed in applications filed on or after June 8, 1995, which this application was not. The same statement appears on the second set of CPA papers also. However, 37 CFR 1.53(d) which is directed to the filing of CPA requests, although initially prohibiting CPA requests in applications filed before June 8, 1995, was revised effective December 1, 1997, to remove this prohibition thus allowing CPA papers to be filed in any pending application. At the time of filing the first CPA request the original form provided by the Office was used rather than the revised form which deleted the prohibition removed in December, 1997. Clearly the same form was used on filing the second CPA request. The Office accepted both of the CPA requests as proper. Only the examiner, at a late date, found fault with the CPA requests. The examiner's' findings are clearly erroneous in view of the revision of 37 CFR 1.53(d). In view thereof, the Notice of Abandonment was mailed in error and is withdrawn and the application restored to pending status with the mailing of this decision.

DECISION

Applicants' petition is **GRANTED.**

The file will be forwarded to the examiner for further consideration.

Should there be any questions with respect to this decision, please contact William R. Dixon, Jr., by mail addressed to: Director, Technology Center 1600, Washington, D.C. 20231, or by telephone at (703)308-3824 or by facsimile transmission at (703) 305-7230.

Jasemine C. Chambers
Director, Technology Center 1600

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)
5483721	1996-01-16	08364801	1994-12-26	1499-1

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

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	/Andrew W. Chu/	Date (YYYY-MM-DD)	2008-05-26
Name	Andrew W. Chu	Registration Number	46625

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 record s.

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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In re Patent No. 5483721
Issue Date: January 16,1996
Application No. 08364801
Filed: December 26,1994
Attorney Docket No.

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed May 26,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 May 26,2008 . 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 an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

Telephone inquires related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

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)
5,561,827	1996-10-01	08/365,631	1994-12-28	13DV11909

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

	Fee	Code
◯	3 ½ year	(1551)
◯	7 ½ year	(1552)
◉	11 ½ year	(1553)

Small Entity

	Fee	Code
◯	3 ½ year	(2551)
◯	7 ½ year	(2552)
◯	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

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	/mm52020/	Date (YYYY-MM-DD)	2008-11-05
Name	Mardson McQuay	Registration Number	52020

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 record s.

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

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

In re Patent No. 5561827
Issue Date: October 1,1996
Application No. 08365631
Filed: December 28,1994
Attorney Docket No. 13DV11909

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed November 5,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 November 5,2008 . 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

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Paper No. 30

SENNIGER POWERS LEAVITT AND ROEDEL
ONE METROPOLITAN SQUARE 16TH FLOOR
ST LOUIS MISSOURI 63102

COPY MAILED

OCT 30 2002

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Ruscher et al. :
Application No. 08/366,090 :
Filed: December 24, 1994 :
Attorney Docket No. 10757 :

This is a decision on the petition filed by facsimile transmission September 27, 2002, under 37 CFR 1.183, requesting waiver of 37 CFR 1.97(d) which prohibits consideration of the Information Disclosure Statements (IDS) filed December 6, 2001 and January 15, 2002, which dates are subsequent to the mailing of a final Office action.

The petition is dismissed. This is not a final agency action.

The IDS filed December 6, 2001 and January 15, 2002 have been placed in the file, but will not be further considered by the examiner.

Petitioner requests waiver of the rules such that the examiner may consider the IDS in question.

Since the above-noted IDS has been submitted subsequent to the mailing of a final Office action on December 3, 1996, satisfaction of the requirements of 37 CFR 1.97(d)(1)-(3) was necessary for the IDS to be considered. That is: (1) a certification in compliance with 37 CFR 1.97(e), (2) a petition requesting consideration, and (3) the $130 fee set forth in 37 CFR 1.17(l), is necessary. As the above-noted IDS lack the required certification, petitioner seeks waiver of 37 CFR 1.97(d)(1).

The regulations pertaining to the submission of an information disclosure statement (IDS) do not require that an IDS be filed, but rather, set forth the circumstances and conditions under which the Office will consider information promptly brought to its attention by applicant(s). Further, these circumstances and conditions are linked to the stage of prosecution at the time of submission of the IDS, as it is necessary for the Patent and Trademark Office (Office) to balance its need and desire to consider all information relevant to an application with its need for an efficient operation and its capability to consider information at various stages in the prosecution of an application.

In order for grant of any petition under 37 CFR 1.183, petitioner must show (1) that this is an extraordinary situation where (2) justice requires waiver of the rule. In re Sivertz, 227 U.S.P.Q. 255, 256 (Comm'r Pat. 1985). Petitioner has not shown that either condition exists in this case.

Petitioner asserts that the information in question, while such was first made known to petitioner on October 13, 2000, in the form of copies of three different notices of third party opposition filed with respect to the corresponding EPO application (No. 0 800 379, filed December 21, 1995), was not immediately reviewed *vis a vis* its relevance to the instant application. Rather, petitioner asserts, it was only in September 2, 2001, during review of the prosecution history of an unrelated U.S. patent, was it noted that information cited by an opposer to the EPO application corresponding to that unrelated U.S. patent, had likewise been cited in that patent. While it was then realized that some of the references cited by the opposers in the EPO application were not also of record herein, the time for making the assertion required by 37 CFR 1.97(d) had expired, such that the necessary averment could not accompany the IDS in question when submitted herein.

While petitioner's candor is appreciated, nevertheless, the circumstances of this case do not demonstrate an extraordinary situation, much less one where justice requires waiver of the rules. Since this application had received a final Office action long before applicant first became aware of the information--regardless of its relevance to this application--a certification was already necessary at that time. See 37 CFR 1.97(d). That is petitioner, at the time he first became aware of the information, could have made the certification, and submitted the information, certification, petition, and fee to the Office, and as such, the information would have been considered by the Office.[1] Petitioner's undue delay in taking appropriate action with respect to this application is not seen to warrant equitable tolling of the period set forth in 37 CFR 1.97(e). See, Vincent v. Mossinghoff, 230 USPQ 621, 625 (D.D.C. 1985).

It is well settled that a party's inadvertent failure to comply with the requirements of the

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[1] The issues raised herein with respect to Office treatment of applicant's delayed recognition of the relevance of a reference, were previously considered via a comment on proposed rule 1.97, and not accepted by the Office. See, "Notice of Final Rulemaking, Duty of Disclosure", 57 *Fed. Reg.* 2021, 2027-2028 (January 17, 1992). The preliminary "Notice of Proposed Rulemaking, Duty of Disclosure" 56 *Fed. Reg.* 37321 (Aug. 6, 1991) at 37326 emphasized that the time that the information was known to any individual designated in 37 CFR 1.55(c) is the time when the information was first discovered, even if applicant's awareness of the materiality came later. This encourages prompt evaluation of the relevance of information and to have a date certain for determining if a certification under 37 CFR 1.97(e) can be properly made.

rules or procedures before the USPTO is not deemed to be an extraordinary situation that would warrant waiver of the rules or procedures under 37 CFR 1.183. See Honigsbaum v. Lehman, 903 F. Supp. 8, 37 USPQ2d 1799 (D.D.C. 1995) (Commissioner did not abuse his discretion in refusing to waive requirements of 37 CFR 1.10(c) in order to grant filing date to patent application, where applicant failed to produce "Express Mail" customer receipt or any other evidence that application was actually deposited with USPS as "Express Mail"), *aff'd without opinion*, 95 F.3d 1166 (Fed. Cir.1996); Nitto Chemical Industry. Co., Ltd. v. Comer, 39 USPQ2d 1778, 1782 (D.D.C. 1994) (Commissioner's refusal to waive requirements of 37 CFR 1.10 in order to grant priority filing date to patent application not arbitrary and capricious, because failure to comply with the requirements of 37 CFR 1.10 is an "avoidable" oversight that could have been prevented by the exercise of ordinary care or diligence, and thus not an extraordinary situation under 37 CFR 1.183); Gustafson v. Strange, 227 USPQ 174 (Comm'r Pats. 1985) (Counsel's unawareness of 37 CFR 1.8 not extraordinary situation warranting waiver of a rule). Rather, as the USPTO did not cause or contribute to the delay in consideration of the information, this is not an "extraordinary situation" where "justice requires" an extraordinary remedy. See Helfgott & Karras, P.C. v. Dickinson, 209 F.3d 1328, 54 USPQ2d 1425 (Fed. Cir. 2000).

Moreover, petitioner concededly has a suitable remedy on hand for his predicament, that does not require the extraordinary remedy of invoking 37 CFR 1.183. It is brought to petitioner's attention that the PTO will not normally consider an extraordinary remedy, when the rules already provide an avenue for obtaining the relief sought. See Cantello v. Rasmussen, 220 USPQ 664, 664 (Comm'r Pat. 1982). As set forth in MPEP § 609, applicants wishing to have the PTO consider an IDS, where, as apparently herein, the necessary certification cannot be made, should consider the filing of a continuing application under 37 CFR 1.53(b), wherein the applicants may bring the references to the attention of the examiner without having to also tender a certification. While petitioner may be concerned about the loss of term should a continuing application be necessary to get the contested reference considered, the underlying delay necessitating such an action is that of petitioner, not the USPTO. Petitioner may also seek relief under the provisions of 35 USC 251 or § 302 and their promulgating regluations.

Telephone inquiries relevant to this decision may be addressed to the undersigned at (703) 305-1820.

Brian Hearn
Senior Petitions Examiner
Office of Petitions
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

KIMBERLY-CLARK WORLDWIDE, INC.
401 NORTH LAKE STREET
NEENAH, WI 54956

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MAY 2 4 2005

OFFICE OF PETITIONS

In re Application of :
A. Todd Leak, et al. :
Application No. 08/366,090 : ON PETITION
Filed: December 28, 1994 :
Attorney Docket No. 10757 :

This is a decision on the petition, filed May 19, 2005, 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 April 15, 2005, 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 relating to this decision should be directed to the undersigned at (571) 272-3204.

The application is being referred to Technology Center AU 3731 for further processing of the request for continued examination under 37 CFR 1.114.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

[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
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Date : May 24, 2005

TO : Director, Office of Patent Publication

FROM : Office of the Deputy Commissioner
for Patent Examination Policy

SUBJECT : Withdrawal from Issue of

Applicant(s) : A. Todd Leak, et al.
Application No. : 08/366,090
Filed : December 28, 1994

The above-identified application has been assigned Patent No. 6,902,553 and an issue date of June 7, 2005.

It is hereby directed that this application be withdrawn from issue at the request of the applicant.

Do not refund the issue fee.

The following erratum should be published in the Official Gazette if the above-identified application is published in the OG of June 7, 2005:

> "All reference to Patent No. 6,902,553 to A. TODD LEAK, ET AL. of WISCONSIN for FLEXIBLE MECHANICAL FASTENING TAB appearing in the Official Gazette of June 7, 2005, should be deleted since no patent was granted."

Sherry D. Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: Paul Harrison, Crystal Park 3-441 (FAX-306-2737)
Deneise Boyd, Crystal Park 2, Suite 1100 (FAX-308-5413)
Mary Louise McAskill, Crystal Park 3-910 (FAX 305-4372)
Niomi Farmer, Crystal Park 3-910 (FAX-305-4372)
Mary E. Johnson (Cookie), P/OCS, CM1-6D07
Duane K.Davis, P/OCS, CM1-6A07
Tamara K. Greene, PK3-910

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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Paper No. 16

BROBECK PHLEGER & HARRISON
INTELLECTUAL PROPERTY DEPARTMENT
1333 H STREET, N.W., SUITE 800
WASHINGTON, DC 20005

COPY MAILED

FEB 19 2003

OFFICE OF PETITIONS

In re Patent No. 5,658,767 :
Issue Date: August 19, 1997 :
Application No. 08/367,881 : NOTICE
Filed: January 3, 1995 :
Attorney Docket No. 031676.0025 :

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.**

Inquiries related to this communication should be directed to the Office of Petitions Staff at (703) 305-9285.

This file is being forwarded to Files Repository.

Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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)
5533848	1996-07-09	08367899	1995-01-03	

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

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	/Benoît CASTEL/	Date (YYYY-MM-DD)	2008-09-29
Name	Benoît CASTEL	Registration Number	35041

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 record s.

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. 5533848
Issue Date: July 9,1996
Application No. 08367899
Filed: January 3,1995
Attorney Docket No.

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed September 29,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 September 29,2008 . 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

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

JAN 31 2008

John P. White
Cooper & Dunham LLP
1185 Sixth Ave
New York, NY 10036

Re: Patent Term Extension
Application for
U.S. Patent No. RE35,724

FINAL DECISION REGARDING PATENT TERM EXTENSION APPLICATION UNDER 35 U.S.C. § 156 FOR U.S. PATENT NO. RE35,724

This is in response to the application for extension of the term of U.S. Patent No. RE35,724 ("the '724 patent") filed under 35 U.S.C. § 156 ("the PTE Application) in the United States Patent and Trademark Office ("USPTO") on June 22, 1998, and the request for reconsideration filed on July 26, 1999 ("the Request"). The PTE Application was filed by Savient Pharmaceuticals, Inc. ("Applicant"), the current owner of the '724 patent, through the previous owner of record, Bio-Technology General Corp. Extension was sought based upon the premarket review of Mircette® under section 505 of the Federal Food Drug and Cosmetic Act ("FFDCA"). Because the Food and Drug Administration ("FDA") and the USPTO have determined that Applicant failed to comply with 35 U.S.C. § 156(a)(5)(A), Applicant's request for extension of the patent term of the '724 patent under 35 U.S.C. § 156(d)(1) is **DENIED** and its request for reconsideration is **DENIED**.

A. Factual Background

On April 22, 1998, the FDA approved NDA No. 20-7134 for Mircette®, an oral contraceptive having as active ingredients desogestrel and ethinyl estradiol.

On June 22, 1998, Applicant timely filed a request for patent term extension in the USPTO (June 21, 1998 was a Sunday.) See 37 C.F.R. § 1.7.

On August 14, 1998, the USPTO requested FDA's assistance in determining the '724 patent's eligibility for patent term extension. The August 14, 1998, letter notes, in part:

> Our review of the application to date indicates that the subject patent would NOT be eligible for extension of the patent term under 35 U.S.C. § 156. The active ingredient of MIRCETTE™, desogestrel and ethinyl estradiol, have been previously approved in the products Ortho-Cept® and Desogen®.

In a letter dated October 7, 1998, FDA advised the USPTO that Mircette® was subject to a regulatory review period as required by 35 U.S.C. § 156(a)(4), but that their records indicated that the approval was not the first permitted commercial marketing or use of the product, as defined under 35 U.S.C. § 156(f)(1), and interpreted by the courts in Glaxo Operations UK Ltd. v. Quigg, 706 F. Supp 1224 (E.D. Va. 1989), aff'd, 894 f.2d. 392 (Fed. Cir. 1990).

On February 24, 1999, the USPTO issued a notice of final determination of ineligibility indicating that because Mircette® was not the first permitted commercial marketing or use of the product, as product is defined in 35 U.S.C. § 156(f), the request for patent term extension was dismissed as ineligible.

On August 2, 1999, Applicant submitted a request for reconsideration to the notice of final determination arguing that Mircette® was eligible because the product involved a novel sequence of administration of the previously approved ingredients, which results in an improvement in the activity of the contraceptive product. The improvement also allows a reduction in the dosage required to achieve contraception.

B. Decision

1. 35 U.S.C. § 156(a)(5)(A) requires that the permission for the commercial marketing or use of the product after the regulatory review period is the first permitted commercial marketing or use of the product under the provision of law under which such regulatory review period occurred.

35 U.S.C. § 156(a) provides (in part) that:
The term of a patent which claims a product ... shall be extended in accordance with this section ... if –

(5)(A) the permission for the commercial marketing or use of the product . . . is the first permitted commercial marketing or use of the product under the provision of law under which such regulatory review period occurred.

(Emphasis added).

Thus, the determination of eligibility of the '724 patent, turns on the provisions in § 156(a)(5)(A) that the permission for the commercial marketing or use is the first permitted commercial marketing or use of the product. The term "product" is defined in 35 U.S.C. § 156(f) as follows:

(f) For purposes of this section:
(1) The term "product" means:
(A) A drug product . . .
(2) The term "drug product" means the active ingredient of -
(A) A new drug, antibiotic drug, or human biological product . . . .including any salt or ester of the active ingredient, as a single entity or in combination with another active ingredient.

(Emphasis added).

Applicant acknowledges that both active ingredients, desogestrel and ethinyl estradiol, were previously approved by the FDA, see page 2, second full paragraph. Additionally, both the USPTO (see USPTO's notice of final determination of February 24, 1999) and the FDA (see

FDA's letter of October 7, 1998) have concluded, and Applicant admits, that the prior approval of the active ingredients by the FDA were under section 505 of the FFDCA, the same provision of law under which regulatory review of the product Mircette® occurred.

In Arnold Partnership v. Dudas, 70 U.S.P.Q.2d 1311 (Fed. Cir. 2004), the Federal Circuit addressed the issue of a drug product with two active ingredients in the context of a patent term extension where each ingredient had been previously approved. There the court determined that the patent term restoration statute, 35 U.S.C. § 156, permits extension of the term for a drug product patent where applicant's permission to market the product is the "first permitted commercial marketing or use," with proper interpretation of the statute applying to an approval of a drug product with two active ingredients only if one of those active ingredients has not been previously approved for marketing, since the language of the statute requires examination of a patent's eligibility for extension on a component-by-component basis. The court cautioned that the statute was not susceptible to an alternate reading that would allow extension of a patent with two previously approved active ingredients if merely the combination thereof constitutes the "first permitted commercial marketing or use." In applying Arnold Partnership to the present application, extension is not proper here because Mircette® does not involve approval of a drug product where at least one of the active ingredients had not been previously reviewed and approved under section 505 of the FFDCA. Because the approval of Mircette® (desogestrel and ethinyl estradiol) was not the first permitted marketing or use of either active ingredient, Applicant fails to comply with the requirements of 35 U.S.C. 156(a)(5)(A) and therefore, the application for PTE must be **denied**.

2. Applicant's arguments with respect to dosages of the active ingredients and administration protocol for Mircette® is unpersuasive

As stated *supra*, Applicant acknowledges that both active ingredients have been previously reviewed and approved under the same section of the FFDCA as the review and approval of Mircette®. Applicant argues , however, that since a different dosage and administration protocol is employed, the Mircette® product "**will be** the first permitted commercial marketing or use of the product under Section 505 of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 355 (35 U.S.C. § 156(a)(5)(A))." See page 2 bridging page 3 of the Request. (Emphasis added). Arguments with respect to dosage and administration protocols have no bearing on determining compliance with 35 U.S.C. § 156(a)(5)(A). Although the benefit of decreasing the dosage of active ingredients desogestrel and ethinyl estradiol because of differences in administration protocols is interesting, such observations have no relevance in determining "first permitted commercial marketing or use of the product" as required by 35 U.S.C. 156(a)(5)(A). Because Applicant's arguments regarding dosage and administration protocol do not rebut the finding that the approval of Mircette® was not the first permitted commercial marketing or use of either active ingredient, Applicant fails to comply with the requirements of 35 U.S.C. 156(a)(5)(A) and therefore, the application for PTE must be **denied**.

C. Conclusion

For the reasons stated above, Applicant's request for extension of the patent term of the '724 patent is **DENIED** and Applicant's request for reconsideration is **DENIED**.

This is considered a final agency action.

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

By mail: Mail Stop Hatch-Waxman PTE
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-7728

Telephone inquiries related to this determination should be directed to Mary C. Till at (571) 272-7755. E-mail inquiries should be directed to mary.till@uspto.gov.

Brian E. Hanlon
Deputy Director
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

cc: Office of Regulatory Policy
HFD-7
5600 Fishers Lane (Rockwall II Rm 1101)
Rockville, MD 20857

Attention: Beverly Friedman

Re: Mircette®
FDA Docket No.: 1998E-0795

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)
5555693	1996-09-17	08372053	1995-01-12	1101-1

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

	Fee	Code
○	3 ½ year	(1551)
○	7 ½ year	(1552)
○	11 ½ year	(1553)

Small Entity

	Fee	Code
○	3 ½ year	(2551)
○	7 ½ year	(2552)
◉	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

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	/Andrew W. Chu/	Date (YYYY-MM-DD)	2008-11-06
Name	Andrew W. Chu	Registration Number	46625

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 record s.

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.

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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

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

In re Patent No. 5555693
Issue Date: September 17,1996
Application No. 08372053
Filed: January 12,1995
Attorney Docket No. 1101-1

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed November 6,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 November 6,2008 . 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

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

In re Patent No. 5656006
Issue Date: August 12,1997
Application No. 08372557
Filed: January 13,1995
Attorney Docket No. W-3120

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed June 21,2007 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 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 June 21,2007 . 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 an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

Telephone inquires related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

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)
5656006	1997-08-12	08372557	1995-01-13	111248.00

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

	Fee	Code
○	3 ½ year	(1551)
◉	7 ½ year	(1552)
○	11 ½ year	(1553)

Small Entity

	Fee	Code
○	3 ½ year	(2551)
○	7 ½ year	(2552)
○	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

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	/Mark D. Miller/	Date (YYYY-MM-DD)	2007-06-21
Name	Mark D. Miller	Registration Number	32277

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.**

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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)
5567901	1996-10-22	08374110	1995-01-18	IVLL18072

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

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Small Entity

	Fee	Code
◯	3 ½ year	(2551)
◯	7 ½ year	(2552)
◯	11 ½ year	(2553)

SURCHARGE

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MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition.

STATEMENT

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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

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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

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	/Rodney C. Tullett/	Date (YYYY-MM-DD)	2009-04-28
Name	Rodney C. Tullett	Registration Number	34034

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.**

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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

In re Patent No. 5567901
Issue Date: October 22,1996
Application No. 08374110
Filed: January 18,1995
Attorney Docket No. IVLL18072

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed April 28,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 April 28,2009 . 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.

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)
5,624,155	1997-04-29	08/374,939	1995-01-17	

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

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	/Roy Kim/	Date (YYYY-MM-DD)	2007-02-06
Name	Roy Kim	Registration Number	51883

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 record s.

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

Commissioner for Patents
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P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

In re Patent No. 5624155
Issue Date: April 29,1997
Application No. 08374939
Filed: January 17,1995
Attorney Docket No. 95-01

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed February 7,2007 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 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 February 7,2007 . 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 an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

Telephone inquires 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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UNITED STATES PATENT AND TRADEMARK OFFICE
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ALEXANDRIA, VA 22313-1450
www.uspto.gov

JUN 17 2004

#45

JOHN P. WHITE
COOPER & DUNHAM
1185 AVENUE OF THE AMERICAS
NEW YORK, NY 10036

In re Application of	:
Geoffrey P. Symonds et al	:
Serial No.: 08/375,291	: PETITION DECISION
Filed: January 18, 1995	:
Attorney Docket No.: 43846-B	:

This is in response to the petition under 37 CFR 1.181, filed February 13, 2004, for withdrawal of abandonment of the above identified application.

A review of the file history shows that this application claims priority to January, 1994. As filed, the application contained a listing of Sequences and was accompanied by a CRF disk containing those sequences. This disk was found to be flawed and a new disk was eventually required and filed on July 28, 1997. Following a Final Office action on August 8, 1997, applicants filed a Request under 37 CFR 1.129(a) for continuing prosecution on July 9, 1998. On August 10, 1998, a new Office action was mailed to applicants which required sequences in the specification be identified by Sequence identifiers and be included on the sequence listing, thus requiring a new sequence listing. A new CRF was filed on February 16, 1999 and found to be acceptable on March 4, 1999.

Following a Final Office action mailed April 26, 1999, applicants filed a request for Continuing Prosecution Application (CPA) which was granted on September 27, 1999. A second CPA request was filed and granted on December 1, 2000. This was followed by a Final Office action (paper 42) on February 28, 2001 and the filing of a Request for Continuing Examination (RCE) on November 28, 2001. On December 11, 2001, a letter requiring compliance with Sequence listings, due to unidentified sequences in newly added claims, was mailed to applicants with a one month time period for reply. A new amendment was submitted on February 4, 2002, but was found to be flawed as it did not comply with Sequence rules then in effect. A Notice requiring resubmission of a corrected disk was mailed to applicants on March 28, 2002, setting a one month time period for reply.

A new sequence listing and disk was received and entered on June 5, 2002. Upon consideration by the examiner discrepancies between sequences listed in the claims and the sequence listing were found and pointed out to applicants in a letter mailed September 4, 2002, also setting a one month time period for reply. A reply was filed October 8, 2002, with a new disk. This listing

was also found to contain errors as reported in the detailed error report accompanying the letter requiring compliance mailed December 12, 2002, and setting a one month time period for reply.

A new disk was submitted on January 14, 2003, but was found to contain the same or similar errors as the previous disk. A third consecutive letter of non-compliance with sequence rules was mailed to applicants on March 12, 2003, detailing again the errors (paper 60). A new disk and listing were filed April 11, 2003. Upon analysis the same errors with respect to variable length sequences were found. A supplemental disk was then filed on October 29, 2003. This disk also contained errors. In view of the fact that the examiner appraised applicant in paper 60 that no new time period was being set (in view of the numerous failed submissions) and that failure to provide a compliant disk within the time period (previously) set, or as extended under 37 CFR 1.136(a), the application would become abandoned, the failure of both the disk submitted April 11, 2003, and the disk submitted October, 29, 2003, led directly to the examiner's holding of abandonment mailed to applicants on December 11, 2003, accompanied by the latest error report.

The result of the above applicant actions has delayed prosecution of this application for more than two years. Only following the Notice of Abandonment did applicants file a corrected and acceptable sequence compliant disk along with this petition. Applicants argue that the disks submitted in April and October, 2003, (which appear to be identical) contained an obvious error in the definition of "n" where "us" should have been "u". However, while the error may have been obvious to the unaided eye or examiner, such is not obvious to a computer. Thus the listing contains an error and is not compliant. It is noted that many tools are available for checking sequences and sequence disks prior to submission, including "CHECKER VERSION 4.0 PROGRAM" available through the Office website. Use of this or other similar programs would have apprised applicants of errors prior to submission and they could have been corrected.

In view of the totality of the circumstances surrounding the prosecution of this application, including applicants' failure to prosecute, be it intentional or inadvertent, the Notice of Abandonment mailed by the examiner on December 11, 2003, appears proper and is not withdrawn.

The petition is **DENIED**.

Applicant has included with the petition under 37 CFR 1.181 a conditional petition under 37 CFR 1.136(a). This petition is DISMISSED as it must (a) be p[resented as a separate paper and (b) is not decided in the Technology Center.

Should there be any questions about this decision please contact William R. Dixon, Jr., by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0519 or by facsimile sent to the general Office facsimile number, 703-872-9306.

Jasemine C. Chambers

Jasemine C. Chambers
Director, Technology Center 1600

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P.O. Box 1450
Alexandria, VA 22313-1450
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JOHN P WHITE
COOPER & DUNHAM
1185 AVENUE OF THE AMERICAS
NEW YORK NY 10036

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MAR 1 8 2005

OFFICE OF PETITIONS

In re Application of :
Symonds, et al. : ON
Application No. 08/375,291 : PETITION
Filed: January 18, 1995 :
Attorney Docket No. 43846-B :
For: METHOD OF TREATING AIDS USING RIBOZYMES TARGETING THE HIV TAT SEQUENCE

This is a decision on the petition under 37 CFR 1.183 to waive the requirement for a terminal disclaimer found in 37 CFR 1.137(b)(4) and the petition under 37 CFR 1.137(b) to revive the above-identified application. Both petitions were filed on August 23, 2004 (certificate of mailing date August 18, 2004).

The petition under 37 CFR 1.183 to waive 37 CFR 1.137(b)(4) is **DISMISSED AS MOOT**.

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

This application became abandoned for failure to timely comply with Office sequence listing rules within an extendable one (1) month period from the mailing of the December 12, 2002 Non-Compliance letter. On March 12, 2003 applicants were informed that the January 14, 2003 (certificate of mailing date January 9, 2003) submission was not acceptable. No new time for reply was set in the March 12, 2003 letter. Therefore, the period continued to run from December 12, 2002. Petitioners did not obtain any extensions of time. Accordingly, this application became abandoned on January 13, 2003. A Notice of Abandonment was mailed on December 11, 2003.

A grantable petition pursuant to 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. 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(d).

Petitioners request that the Office waive 37 CFR 1.137(b)(4), which requires submission of a terminal disclaimer in any utility application filed before June 8, 1995 as a condition for revival. However, a terminal disclaimer is not required in the instant case because a CPA was filed on December 1, 2000, which is after June 8, 1995.

The petition under 37 CFR 1.183 to waive 37 CFR 1.137(b)(4) is **DISMISSED AS MOOT**. The $130.00 petition fee submitted on August 23, 2004 (certificate of mailing date August 18, 2004) will be credited to deposit account no. 03-3125.

Petitioners have met the requirements of 37 CFR 1.137(b) for revival. Petitioners submitted (1)a corrected and acceptable sequence compliance disk on February 13, 2004; (2) an acceptable statement of the unintentional nature of the delay in responding to the December 12, 2002 Non-Compliance letter; and (3) the petition fee.

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

This file is being returned to Technology Center GAU 1635.

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

E. Shirene Willis
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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In re Patent No. 5511628
Issue Date: April 30,1996
Application No. 08375785
Filed: January 20,1995
Attorney Docket No.

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed September 30,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 September 30,2008 . 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.

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)
5511628	1996-04-30	08375785	1995-01-20	4776-9

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

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	/alexander c. johnson, jr./	Date (YYYY-MM-DD)	2008-09-30
Name	Alexander C. Johnson, Jr.	Registration Number	29396

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.**

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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)).

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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.

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)
5,537,632	1996-07-16	08/376,447	1995-01-23	REMB-0095

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).

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	Fee	Code
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Small Entity

	Fee	Code
◯	3 ½ year	(2551)
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SURCHARGE

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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

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	/Vincent J. Roccia/	Date (YYYY-MM-DD)	2008-10-02
Name	Vincent J. Roccia	Registration Number	43887

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.**

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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 record s.

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

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

In re Patent No. 5537632
Issue Date: July 16,1996
Application No. 08376447
Filed: January 23,1995
Attorney Docket No. 052601-1260

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed October 2,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 October 2,2008 . 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.

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)
6,130,206	2000-10-10	08376457	1995-01-23	51-361

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

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	/Gary R. Tanigawa/	Date (YYYY-MM-DD)	2009-01-26
Name	Gary R. Tanigawa	Registration Number	43180

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 record s.

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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Paper No. 55

JAMES OLIFF
OLIFF & BERRIDGE
P.O. BOX 19928
ALEXANDRIA VA 22320

JAN 14 2004

In re Application of	:	
NAOMASA SHIRAISHI	:	DECISION ON PETITION TO
Application No. 08/376,676	:	SUSPEND PROSECUTION
Filed: January 20, 1995	:	UNDER 37 C.F.R. § 1.103
Attorney Docket No. XA-7151B	:	

This is a decision on the petition under 37 C.F.R. § 1.181 and/or 37 C.F.R. § 1.182, filed September 15, 2003, requesting that the prosecution of the above-identified application be suspended under 37 C.F.R. § 1.103(a) or (e), and an interference be declared pursuant to 37 CFR § 1.615(a). The petition is being treated as a petition to suspend action under 37 C.F.R. § 1.03(a).

The petition is DENIED.

A final Office action was mailed setting a shortened statutory period of three months for filing a response. Extensions of this period are governed by 37 C.F.R. § 1.136(a). Currently, a response to the final Office action has not been received.

Suspension of action is governed by 37 C.F.R. § 1.103. 37 C.F.R. § 1.103(a) and (e) state, in part, as follows:

> (a) Suspension for cause. On request of the applicant, the Office may grant a suspension of action by the Office under this paragraph for good and sufficient cause. The Office will not suspend action if a reply by applicant to an Office action is outstanding. Any petition for suspension of action under this paragraph must specify a period of suspension not exceeding six months. Any petition for suspension of action under this paragraph must also include:
> (1) A showing of good and sufficient cause for suspension of action; and
> (2) The fee set forth in § 1.17(h), unless such cause is the fault of the Office.
> .....
> (e) Notice of suspension on initiative of the Office. The Office will notify applicant if the Office suspends action by the Office on an application on its own initiative.

Pursuant to 37 C.F.R. § 1.103(a), action will not be suspended if there is an outstanding Office action that requires a reply from the applicant. In the instant application, the final Office action dated June 20, 2003 has not been responded to. Consequently, the petition to suspend action cannot be granted. See also M.P.E.P. § 709.

The application filed is being returned to the Technology Center 2800 Central Files where it awaits a reply under 37 C.F.R. § 1.113.

Any inquiry regarding this decision should be directed to Arthur T. Grimley at (703) 308-1373 (before February 10, 2004) and (571) 272-2136 (after February 10, 2004).

Howard N. Goldberg, Director
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

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Paper No. 60

JAMES OLIFF
OLIFF & BERRIDGE
P.O. BOX 19928
ALEXANDRIA VA 22320

MAY 25 2004

In re Application of :
NAOMASA SHIRAISHI :
Application No. 08/376,676 :
Filed: January 20, 1995 :
Attorney Docket No. XA-7151B :

DECISION ON RENEWED PETITION

This is a decision on the Request for Reconsideration, filed February 18, 2004, to reconsider the January 14, 2004 decision on petition requesting that the prosecution of the above-identified application be suspended under 37 C.F.R. § 1.103(a) or (e), and an interference be declared pursuant to 37 C.F.R. § 1.615(a). The renewed petition is being treated as a petition to suspend action under 37 C.F.R. § 1.103(a), or, in the alternative, a petition under 37 C.F.R. § 1.181 to compel the examiner to set up an interference proceeding under 37 C.F.R. § 1.607(b) and suspend *ex parte* prosecution under 37 C.F.R. § 1.615.

The petition is DENIED.

A final Office action was mailed on June 20, 2003 setting a shortened statutory period of three months for filing a response. A Notice of Appeal was filed on December 22, 2003. Pursuant to 37 C.F.R. § 1.192(a), an appeal brief must be filed within two-months of the date of the Notice of Appeal. Extensions of this period are governed by 37 C.F.R. § 1.136(a). The record does not indicate that an appeal brief has been received.

Pursuant to 37 C.F.R. § 1.103(a), the Office may grant suspension of action by the Office for good and sufficient cause. There is no impending Office action necessary since the Office is awaiting the filing of the appeal brief required from petitioner. Accordingly, 37 C.F.R. § 1.103(a) is not available to petitioner at this time. Further, to suspend an action by appellant under 37 C.F.R. § 1.103(a) would be tantamount to waiving the requirement of 37 C.F.R. § 1.192 and, in effect, improperly granting a petition for under 37 C.F.R. § 1.183, which is beyond the authority of the decision maker. The petition under 37 C.F.R. § 1.103(a) is denied.

The petition, however, may be treated as a petition under 37 C.F.R. § 1.181 seeking supervisory authority to compel the examiner to declare an interference pursuant to 37 C.F.R. § 1.607(b) and to suspend ex parte prosecution under 37 C.F.R. § 1.615.

Petitioner argues, in the petition filed September 15, 2003, that an interference should be set up because petitioner has met the requirements of the Rules and the M.P.E.P. for requesting an interference with a patent and, pursuant to M.P.E.P. § 2309.02, an interference may now be declared by the Office. Specifically, petitioner indicates that count 1 (corresponding exactly to claim 94) and count 2 (corresponding exactly to claim 114) have been proposed for interference with claims 94-113 and 116-167, 173-176, 182-185, 187-198 designated as corresponding to count 1 and claims 114-116, 168-172, 177, 178, 186 and 199- 201 as corresponding to count 2.

A review of the file record indicates that claims 94, 95, 100, 101, 106/101/100, 107, 108, 110/108, 111, 112, 113/112/111, 116/95/94, 116/107/101/100, 125/113/112/111, 123/106/101/100, 126-128, 130, 135,136, 143, 153-158, 164, 166-173, 174, 177, 178, 183-185, 187-189, 192 and 196-201 are finally rejected and their rejection is now under appeal. Rejected claim 94 is designated by petitioner as corresponding exactly to count 1, and rejected claim 177 as corresponding to count 2.

Section 2309.02 of the M.P.E.P. and the Rules relating to interference are permissive and authorize declaration of interference in situations where there are rejected claims and at least one allowed claim. However, this does not mean that an interference will necessarily be declared. Here, there are numerous claims of varying scope, many of which are deemed unpatentable by the examiner. Consequently, the "true" scope of the interfering subject matter for the purpose of determining whether an interference in fact exists (i.e., the scope of the count(s)) cannot readily be ascertained at this time.

It is Office policy that an interference between an application(s) and a patent(s) be declared if the examiner determines that there is interfering subject matter patentable to the applicant. However, an interference is set up and declared only after establishment of the appropriate count(s). "A *count* defines the interfering subject matter between two or more applications or between one or more applications and one or more patents. When there is more than one count, each count shall define a separate patentable invention..." 37 C.F.R. § 1.601(f). In the instant application, claim 94 is designated by petitioner as corresponding exactly to count 1 and is one of several independent claims under appeal. Also, independent claims, such as claim 177, designated by petitioner as corresponding to count 2, are also finally rejected. As such, there is a genuine issue as to what constitutes the patentable and interfering subject matter and, consequently, how many and which of the 104 pending claims define a patentable invention(s) for the purpose of setting up the appropriate count(s) for interference. Consequently, it is premature to set up and declare an interference at this stage of *ex parte* prosecution.

For the above-stated reasons, the petition to suspend *ex parte* prosecution under 37 C.F.R. § 1.103(a) and to compel to compel the examiner to set up an interference under 37 C.F.R. § 1.181 is denied.

The application file is being returned to the Technology Center 2800 Central Files where it awaits the appeal brief pursuant to 37 C.F.R. § 1.192. The time period for submitting the appeal brief continues to run from the date of the Notice of Appeal.

Any inquiry regarding this decision should be directed to Hien H. Phan at (571) 272-1606.

Howard N. Goldberg, Director
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

UNITED STATES
PATENT AND
TRADEMARK OFFICE

Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office
Washington, DC 20231
www.USPTO.gov

Paper No. 14

John L. Welsh
2341 Jefferson Davis Highway
Suite 112
Arlington, VA 22202

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NOV 0 7 2001

OFFICE OF PETITIONS

In re Patent No. 5,640,497 :
Issue Date: June 17, 1997 :
Application No. 08/377,008 : ON PETITION
Filed: January 23, 1995 :
Patentee: Phillip A. Woolbright :

This is a decision on the petition under 37 CFR 1.378(c), filed October 30, 2001, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

The patent file is being forwarded to Files Repository.

Telephone inquiries concerning this decision should be directed to Andrea Coram at (703) 308-6711.

Andrea Coram
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
For Patent Examination Policy

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re the Application of: Phillip Alexander Woolbright

Serial No.: 08/377,008

Group Art Unit: 2412

Filed : 01/23/95

Examiner: A. Jankus

Title : LAYOUT REDESIGN USING POLYGON MANIPULATION

ISSUE FEE TRANSMITTAL LETTER

Commissioner of Patents
and Trademarks
Box ISSUE FEE
Washington, D.C. 20231

Sir:

Enclosed is payment of the issue fee in the amount of $645.00 for the above-identified application.

Respectfully submitted,

Howard N. Flaxman
Registration No. 34,595

AQUILINO & WELSH, P.C.
2121 Crystal Drive
Suite 503
Arlington, VA 22202

(703) 920-1122

Docket No. PA-5006

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov

Paper No. 20

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MAR 1 3 2001

OFFICE OF PETITIONS
A/C PATENTS

Patrick Smith
2901 Beverly Blvd.
Los Angeles, CA 90057

In re Smith
Patent No. 5,598,947
Application No. 08/377,449
Filed: January 24, 1995
Issued: February 4, 1997
For: AUTOMATIC HOT FOOD VENDING MACHINE

ON PETITION

This is a decision on the petition filed February 13, 2001, and supplemented in March of 2001, under 37 CFR 1.378(c)[1] to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED.**

The patent issued February 4, 1997. The last day of the grace period for paying the 3.5 year maintenance fee was February 4, 2001. Therefore, since this petition was filed within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), this petition was timely filed under the provisions of 37 CFR 1.378(c).

Accordingly, the maintenance fee in this case is hereby accepted and the above-identified patent is hereby reinstated as of the mail date of this decision.

This file is being forwarded to Files Repository.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.

Charles Steven Brantley
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

[1] Petitioner originally filed a petition under 37 CFR 1.378(b). However, after a telephone discussion with Steven Brantley of the Office of Petitions, petitioner orally made the decision to withdraw the petition under 37 CFR 1.378(b) and to file a petition under 37 CFR 1.378(c) instead. Later, petitioner called Steven Brantley and informed him that the petition and additional money for the surcharge had been filed. Office records indicate receipt of the monetary funds but the petition has not been matched with the file. Petitioner has indicated a strong desire for a decision to be rendered as soon as possible. Petitioner does not have a phone and therefore the Office cannot call petitioner and request an additional paper copy. For the above reasons, the telephone conversations will be construed as a petition under 37 CFR 1.378(c) and a withdrawal of the petition under 37 CFR 1.378(b). If this is an improper interpretation of the telephone conversations, petitioner should contact the Office immediately.

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COMMISSIONER FOR PATENTS
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Paper No. 22

PATRICK SMITH
12335 SANTA MONICA BLVD.
LOS ANGELES, CA 90025

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MAR 2 4 2005

OFFICE OF PETITIONS

In re Patent No. 5,598,947 :
Issue Date: February 4, 1997 :
Application No. 08/377,449 : ON PETITION
Filed: January 24, 1995 :
Patentee: Patrick Smith :

REQUIREMENT FOR INFORMATION

A petition was filed on February 14, 2005 which is being treated as a petition under 37 CFR 1.378(c) to accept the delayed payment of a maintenance fee for the above-identified patent.

A decision on this petition will be held in abeyance for a period of **TWO MONTHS** from the date of this communication to permit petitioner to address the following issues before a decision is rendered. No extension of this two-month time limit can be granted under 37 CFR 1.136(a) or (b).

This patent issued on February 4, 1997. Accordingly, the grace period for paying the second maintenance fee expired at midnight on February 4, 2005. Therefore, this petition was filed within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), this petition was timely filed under the provisions of 37 CFR 1.378(c).

Effective December 8, 2004, the fee for the 7 ½ years Patent Maintenance Fee increased to $1150 and the surcharge fee remain at $1640. Petitioner submitted $1110 with the petition filed on February 14, 2005, which leaves a balance of $1680.

The response to this Requirement for Information should include a cover letter entitled "Response to Requirement for Information."

At the end of the two month period specified above, a decision will be rendered on the instant petition under 37 CFR 1.378 as supplemented by any information submitted in response to this Requirement for Information.

In order to expedite reinstatement of this patent, petitioner may wish to consider submitting the reply to the requirement for information by facsimile transmission to the telephone number indicated below and to the attention of the undersigned.

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

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

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

By facsimile: (703) 872-9306
ATTN: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272- 3210.

Irvin Dingle
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Best Available Copy

DIVISION

PTO/SB/47 (07-03)
Approved for use through 05/31/2006. 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 a valid OMB control number.

"FEE ADDRESS" INDICATION FORM

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Alexandria, VA 22313-1450

INSTRUCTIONS : Only an address associated with a Customer Number can be established as the fee address for maintenance fee purposes (hereafter, fee address). A fee address should be specified when the patentee would like correspondence related to maintenance fees to be mailed to a different address than the correspondence address for the application. If there is a Customer Number already associated with the fee address for the patent or allowed application, check the first box below and provide the Customer Number in the space provided. If there is no Customer Number associated with the fee address for the patent or allowed application, you must check the second box below and attach a Request for Customer Number form (PTO/SB/125). For more information on Customer Numbers, see the Manual of Patent Examining Procedure (MPEP) § 403.

Please recognize as the "Fee Address" under the provisions of 37 CFR 1.363 the address associated with:

☐ Customer Number:

OR

☐ Request for Customer Number (PTO/SB/125) attached hereto in the following listed application(s) for which the Issue Fee has been paid for patent(s).

PATENT NUMBER (if known)	APPLICATION NUMBER
5,598,947	

Completed by (check one):

☒ Applicant/Inventor

Patrick Smith
Signature

☐ Attorney or Agent of record _____
(Reg. No.)

Patrick Smith
Typed or printed name

☐ Assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)

_____
Requester's telephone number

☐ Assignee recorded at Reel _____ Frame _____

_____
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more that one signature is required, see below*.

☐ * Total of _____ forms are submitted.

This collection of information is required by 37 CFR 1.363. 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 5 minutes 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: Mail Stop M Correspondence, 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

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

Paper No. 24

Patrick Smith
12335 Santa Monica Blvd
Los Angeles, CA 90025

COPY MAILED

JUN 14 2005

OFFICE OF PETITIONS

In re Patent of :
Smith :
Patent No. 5,598,947 :
Issue Date: February 4, 1997 :
Application No. 08/377,449 :
Filing Date: January 24, 1995 :
For: Automatic Hot Food Vending Machine :

Decision on Petition

This is a decision on the petition under 37 CFR 1.378(b), filed February 14, 2005, and supplemented May 24, 2005, to reinstate the above-identified patent. This is also a decision on the petition filed in the alternative under 37 CFR 1.378(c).

The petition under 37 CFR 1.378(b) is **dismissed**.

The petition under 37 CFR 1.378(c) is **dismissed**.

Facts:

The patent issued February 4, 1997. The 7.5 year maintenance fee could have been paid from February 4, 2004, through August 4, 2004, or with a surcharge during the period from August 5, 2004, to February 4, 2005.

Petitioner alleges $1,110 was mailed via certified mail to the Office on Saturday, February 5, 2005.

The payment was received on February 14, 2005.

The amount due for maintenance fees is set by statute and Congress usually changes these fees once or twice a year.

Petitioner has supplied a page, printed from the Office's website, indicating the fee amount due for the 7.5 year fee as $1,045. The page was printed on August 3, 2004. On August 3, 2004, the fee amount due for a small entity submitting the 7.5 year fee was $1,045.

Congress raised the fee to $1,075 effective October 1, 2004.

Congress raised the fee to $1,150 effective December 8, 2004.

The patent expired at midnight on February 4, 2005, because the fee was not timely submitted and because the payment amount was incorrect.

When one mails correspondence by certified mail, the effective date for the correspondence is the date the correspondence is received and not the date the correspondence is mailed. The fee was due by midnight of February 4, 2005. The fee was not received until February 14, 2005.

Even if the payment was accorded the date the payment was mailed, the payment would be untimely. The payment was due by midnight on February 4, 2005. The payment was not mailed until February 5, 2005.

On February 4, 2005, the maintenance fee due was $1,150 and the surcharge due was $65. Petitioner does not contend $1,215 was submitted. Petitioner alleges $1,010 was paid. The statute required $1,215 to be paid to prevent expiration of the patent. The required fee was not paid and the patent therefore expired.

Analysis:

The petition under 37 CFR 1.378(b)

A petition to accept the unavoidably delayed payment of an unavoidably delayed payment of a maintenance fee under 35 U.S.C. § 41(c) and 37 CFR 1.378(b) must be accompanied by:

(1) payment of the appropriate maintenance fee, unless previously submitted;
(2) payment of the appropriate surcharge set forth in 37 CFR 1.20, and
(3) a showing to the satisfaction of the Commissioner that the entire delay in paying the required maintenance fee from the due date for the fee until the filing of a grantable petition pursuant to this paragraph was unavoidable.

As to (1) and (2), the maintenance fee due for a small entity after 7.5 years is currently $1,150, and the surcharge is $700. Petitioner has only submitted $1,010.

As to (3), petitioner has not payed the full maintenance fee. Therefore, petitioner has not, and can not, prove the entire delay from the due date of the fee until payment of the full fee was unavoidable.

The petition under 37 CFR 1.378(c)

A petition to accept the unavoidably delayed payment of an unavoidably delayed payment of a maintenance fee under 35 U.S.C. § 41(c) and 37 CFR 1.378(c) must be accompanied by:

(1) payment of the appropriate maintenance fee, unless previously submitted;
(2) payment of the appropriate surcharge set forth in 37 CFR 1.20, and
(3) a statement that the entire delay in the submission of the fee was unintentional.

As to (1) and (2), the maintenance fee due for a small entity after 7.5 years is currently $1,150, and the surcharge is $1,640. Petitioner has only submitted $1,010.

As to (3), petitioner has not payed the full maintenance fee. Therefore, petitioner can not state the entire delay from the due date of the fee until payment of the full fee was unintentional.

Petitioner's current options:

I. Petitioner may file a request for reconsideration under 37 CFR 1.378(b).

If reconsideration of this decision is desired, a petition for reconsideration must be filed within TWO (2) MONTHS from the mail date of this decision. No extension of this two-month time limit can be granted under 37 CFR 1.136(a) or (b).

The petition for reconsideration should be entitled "Petition for Reconsideration under 37 CFR 1.378(b)."

Any petition for reconsideration of this decision must be accompanied by a non-refundable petition fee of $400 as set forth in 37 CFR 1.17, the $140 still owed for the maintenance fee, and the $700 surcharge. In other words, any request for reconsideration must be accompanied by a total of $1,240.

Any petition for reconsideration of this decision under the unavoidable standard must also be accompanied by a showing to the satisfaction of the Commissioner that the entire delay in paying the required maintenance fee from the due date for the fee until the filing of a grantable petition pursuant to this paragraph was unavoidable.

Petitioner may wish to note that, in general, nonawareness of the content of, or a misunderstanding of, PTO statutes, PTO rules, the MPEP, or Official Gazette notices, will not constitute unavoidable delay.[1] For example, a patentee is responsible for knowing when various fees are due and determining the correct amount to pay for the fees.

It is extremely important that petitioner supply **any** and **all** relevant information and documentation with his request for reconsideration. The Commissioner's decision will be based solely on the administrative record in existence. Petitioner should remember that it is not enough that the delay was unavoidable; petitioner must prove that the delay was unavoidable. A petition will not be granted if petitioner provides insufficient evidence to "show" that the delay was unavoidable. Therefore, if a request for reconsideration is filed, it must establish that the entire delay in the submission of the maintenance fee was unavoidable.

II. Petitioner may file a request for reconsideration under 37 CFR 1.378(c).

If reconsideration of this decision is desired, a petition for reconsideration must be filed within TWO (2) MONTHS from the mail date of this decision. No extension of this two-month time limit can be granted under 37 CFR 1.136(a) or (b).

The petition for reconsideration should be entitled "Petition for Reconsideration under 37 CFR 1.378(c)."

Any petition for reconsideration of this decision must be accompanied by a non-refundable petition fee of $400 as set forth in 37 CFR 1.17, the $140 still owed for the maintenance fee, and the $1,640 surcharge. In other words, any request for reconsideration must be accompanied by a total of $2,180.

Any petition for reconsideration of this decision under the unintentional standard must also be accompanied by a statement that the delay in the submission of the fee was unintentional. Petitioner does not have to supply proof the delay was unintentional but may merely supply a statement.

A copy of a blank petition form PTO/SB/66 is enclosed for petitioner's convenience. As an alternative to writing a check, or mailing a money order, petitioner may pay the required

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[1] See Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (Fed. Cir. 1982) (citing Potter v. Dann, 201 U.S.P.Q. (BNA) 574 (D. D.C. 1978) for the proposition that counsel's nonawareness of PTO rules does not constitute "unavoidable" delay)); Vincent v. Mossinghoff, 1985 U.S. Dist. LEXIS 23119, 13, 230 U.S.P.Q. (BNA) 621 (D. D.C. 1985) (Plaintiffs, through their counsel's actions, **or their own**, must be held responsible for having noted the MPEP section and Official Gazette notices expressly stating that the certified mailing procedures outlined in 37 CFR 1.8(a) do not apply to continuation applications.) (Emphasis added).

additional funds by credit card. A credit card authorization form is enclosed for petitioner's convenience.

III. Petitioner may request a refund of the maintenance fee and surcharge which accompanied the petition.

Petitioner may request a refund of the $1,010 submitted for the 7.5 year maintenance fee by writing to: Mail Stop 16, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450. A copy of this decision should accompany petitioner's request.

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 facsimile: (703) 872-9306
Attn: Office of Petitions

If a request for reconsideration is filed, and a decision on the new petition is not received within three months, petitioner may wish to call the number below to check on the status of the renewed petition.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.

Charles Steven Brantley
Petitions Attorney
Office of Petitions

Attached: PTO/SB/66
Credit Card Authorization Form

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)
6020210	2000-02-01	08/377,774	1995-01-23	022370-001600US

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

	Fee	Code
○	3 ½ year	(1551)
◉	7 ½ year	(1552)
○	11 ½ year	(1553)

Small Entity

	Fee	Code
○	3 ½ year	(2551)
○	7 ½ year	(2552)
○	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

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	/Randolph T. Apple/	Date (YYYY-MM-DD)	2008-03-21
Name	Randolph T. Apple	Registration Number	36429

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 record s.

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

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

In re Patent No. 6020210
Issue Date: February 1,2000
Application No. 08377774
Filed: January 23,1995
Attorney Docket No. 212302000120

:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)

This is a decision on the electronic petition, filed March 24,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 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 March 24,2008 . 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 an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

Telephone inquires related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

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

Paper No. ~~30~~ 55

MARY J. WILSON
NIXON & VANDERHYE P.C.
1100 NORTH GLEBE ROAD, 8TH FLOOR
ARLINGTON, VA 22201-4714

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OCT 0 2 2003

OFFICE OF PETITIONS

In re Patent No. 5,876,961
Issue Date: March 2, 1999
Application No. 08/378,939
Filed: January 26, 1995
Patentee(s) James S. Crowe et al

ON PETITION

This is a decision on the petition under 37 CFR 1.378(c), filed September 5, 2003, to accept the delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

Telephone inquiries concerning this decision should be directed to Irvin Dingle at (703) 306-5684.

The patent file is being forwarded to Files Repository.

Irvin Dingle
Petitions Examiner
Office of Petitions
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
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Paper No. 29

LEYDIG VOIT & MAYER
TWO PRUDENTIAL PLAZA
SUITE 4900
180 NORTH STETSON AVENUE
CHICAGO, IL 60601-6780

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AUG 30 2005

OFFICE OF PETITIONS

In re Patent No. 6,114,397 :
Issue Date: September 5, 2000 :
Application No. 08/379,872 : ON PETITION
Filed: January 27, 1995 :
Patentee(s): Mary R. Flack et al :

This is a decision on the petition under 37 CFR 1.378(c), filed November 12, 2004, to accept the delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

Petitioner is advised that a maintenance fee payment must identify the patent to which it relates by at least the patent number and the application, see 37 CFR 1.366(c).

Petitioner will not receive future correspondence related to maintenance fees for the above-identified patent unless a "fee address" indication form is submitted for the above-identified patent.

Telephone inquiries concerning this decision should be directed to Wan Laymon at (571) 272-3220.

The patent file is being forwarded to Files Repository.

Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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
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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)
5596775	1997-01-28	08/380,900	1995-01-30	98141.00017

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

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	/mark d giarratana/	Date (YYYY-MM-DD)	2010-07-12
Name	Mark D. Giarratana, Esq.	Registration Number	32615

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

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

In re Patent No. 5596775
Issue Date: January 28,1997
Application No. 08380900
Filed: January 30,1995
Attorney Docket No. N5651.007

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed July 12,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 July 12,2010 . 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

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

In re Patent No. 6071051
Issue Date: June 6,2000
Application No. 08381555
Filed: January 31,1995
Attorney Docket No. BK/24211CPA

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed May 25,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 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 May 25,2010 . 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)
6071051	2000-06-06	08381555	1995-01-31	

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

Sole Patentee			
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	/ Gary J. Reed/	Date (YYYY-MM-DD)	2010-05-25
Name	Gary J. Reed		

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.

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)
5601859	1997-02-11	08382064	1995-02-01	15428.0312US01

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

	Fee	Code
○	3 ½ year	(1551)
○	7 ½ year	(1552)
◉	11 ½ year	(1553)

Small Entity

	Fee	Code
○	3 ½ year	(2551)
○	7 ½ year	(2552)
○	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

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	/Mark T. Skoog/	Date (YYYY-MM-DD)	2009-10-27
Name	Mark T. Skoog	Registration Number	40178

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.**

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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)).

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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

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

In re Patent No. 5601859
Issue Date: February 11,1997
Application No. 08382064
Filed: February 1,1995
Attorney Docket No. 9462

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed October 27,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 October 27,2009 . 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.

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)
6043008	2000-03-28	08383170	1995-02-03	F 094505US

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

	Fee	Code
○	3 ½ year	(1551)
◉	7 ½ year	(1552)
○	11 ½ year	(1553)

Small Entity

	Fee	Code
○	3 ½ year	(2551)
○	7 ½ year	(2552)
○	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

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	/Aaron M Waxler/	Date (YYYY-MM-DD)	2008-12-16
Name	Aaron Waxler	Registration Number	48027

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.**

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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 record s.

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

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

In re Patent No. 6043008
Issue Date: March 28,2000
Application No. 08383170
Filed: February 3,1995
Attorney Docket No. PHF-94-505

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed December 17,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 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 December 17,2008 . 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

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

Paper No. 24

WAGNER, MURABITO & HAO, LLP
TWO NORTH MARKET STREET
THIRD FLOOR
SAN JOSE, CA 95113

COPY MAILED

SEP 16 2004

OFFICE OF PETITIONS

In re Application of

Bergeron, et al.

Application No. 08/383,409

Filed: January 31, 1995

Attorney Docket No. SVC202PD

DECISION ON PETITION

This is a decision on the petition under 37 CFR §1.137(b), June 25, 2004, 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 "Notice of Allowance and Issue Fee Due" and the "Notice of Allowability" mailed June 9, 1997. The notices allowed a three-month statutory period for reply. No response was received within the allowable period and the application became abandoned on September 10, 1997. A Notice of Abandonment was mailed on February 5, 1999.

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 item (1) above.

The Notice of Allowability required new formal drawings to be filed. No formal drawings filed after the mailing of the Notice of Allowability were found in the application file and did not accompany the petition papers. Formal drawings are the only proper response to the Notice of Allowability and must be filed before a petition under 37 CFR 1.137(b) will be considered grantable.

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: (703) 308-6916
Attn: Office of Petitions

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 305-0010.

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

Paper No. 28

WAGNER, MURABITO & HAO LLP
TWO NORTH MARKET STREET
THIRD FLOOR
SAN JOSE, CA 95113

COPY MAILED

OCT 29 2004

OFFICE OF PETITIONS

In re Application of

Bergeron, et al.

Application No. 08/383,409

Filed: January 31, 1995

Attorney Docket No. SVC202PD

DECISION ON PETITION

This is a decision on the renewed petition under 37 CFR §1.137(b), October 15, 2004, 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 "Notice of Allowance and Issue fee Due" and the "Notice of Allowability" mailed June 9, 1997. The notices allowed a three-month statutory period for reply. No response was received within the allowable period, and the application became abandoned on September 10, 1997. A Notice of Abandonment was mailed on February 5, 1999. A petition under 37 CFR 1.137(b) was filed on June 25,2 004, and dismissed by a decision mailed September 16, 2004.

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(l);

(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 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 paragraph (d) of this section.

The instant petition does not satisfy the requirements of item (4) above.

Further review of the application history did not reveal the terminal disclaimer as required by 37 CFR 1.137(d) which states, in pertinent part that:

> [a]ny petition to revive pursuant to this section in either a utility or plant application filed before June 8, 1995, must be accompanied by a terminal disclaimer and fee as set forth in § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the lesser of:
>
> (i) The period of abandonment of the application; or
> (ii) The period extending beyond twenty years from the date on which the application for patent was filed in the United States or, if the application contains a specific reference to an earlier filed application(s) under 35 USC 120, 121, or 365(c), from the date on which the earliest such application was filed.

As this application was filed before June 8, 1995, a terminal disclaimer and fee meeting the requirements cited above must accompany any renewed petition filed.

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) 272-3222
Attn: Office of Petitions

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3222

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

WAGNER, MURABITO & HAO LLP
TWO NORTH MARKET STREET
THIRD FLOOR
SAN JOSE, CA 95113

COPY MAILED

MAR 1 5 2005

OFFICE OF PETITIONS

In re Application of

Bergeron, et al.

Application No. 08/383,409

Filed: January 31, 1995

Attorney Docket No. SVC202PD

DECISION ON PETITION

This is a decision on the renewed petition under 37 CFR §1.137(b), March 3, 2005 (certificate of mailing dated February 25, 2005), to revive the above-identified application.

The second renewed petition is **granted**.

This application became abandoned for failure to respond in a timely manner to the "Notice of Allowance and Issue fee Due" and the "Notice of Allowability" mailed June 9, 1997. The notices allowed a three-month statutory period for reply. No response was received within the allowable period, and the application became abandoned on September 10, 1997. A Notice of Abandonment was mailed on February 5, 1999. A petition under 37 CFR 1.137(b) was filed on June 25, 2 004, and dismissed by a decision mailed September 16, 2004. A second renewed petition was filed on October 15, 2004, and dismissed by a decision mailed October 29, 2004.

The terminal disclaimer required by 37 CFR 1.137(d) was received on March 3, 2005.
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.

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 to the address of currently of record until such time as appropriate instructions are received to the contrary.

Deposit account 12-0415 will be refunded $1,500.00 for the petition fee as it is a duplicate payment.

The application is being forwarded to Technology Center 1700, GAU 1752 for treatment of the "Request for Withdrawal of Attorney or Agent and Change of Correspondence Address" filed November 20, 2004, and then to the Office of Patent Publications for processing into a patent.

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

Kenya A. McLaughlin

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

cc:

Robert Popa
Ladas & Parry
5670 Wilshire Boulevard, Suite 2100
Los Angeles, CA 90036

OIPE
NOV 20 2004
PATENT & TRADEMARK OFFICE

11-22-04

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1752

PTO/SB/83 (09-03)
Approved for use through 11/30/2005. OMB 0651-0035
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 WITHDRAWAL AS ATTORNEY OR AGENT AND CHANGE OF CORRESPONDENCE ADDRESS

Application Number	08/383,409
Filing Date	01/31/95
First Named Inventor	David L. BERGERON et al.
Art Unit	~~1113~~ 1752
Examiner Name	CHEA, T.
Attorney Docket Number	CDST-C019

To: Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Approved 11/15/05
/mstone/
Jacqueline M. Stone, Director
Technology Center 1700

Please withdraw me as attorney or agent for the above identified patent application, and

☐ all the attorneys/agents of record.

☐ the attorneys/agents (with registration numbers) listed on the attached paper(s), or

☑ the attorneys/agents associated with Customer Number 41066

NOTE: This box can only be checked when the power of attorney of record in the application is to all the practitioners associated with a customer number.

The reasons for this request are: Client knowingly and willfully assents to withdrawal

CORRESPONDENCE ADDRESS

1. ☐ The correspondence address is NOT affected by this withdrawal.
2. ☑ Change the correspondence address and direct all future correspondence to:

☐ Customer Number:

OR

☑ Firm or Individual Name	LAW OFFICES OF LADAS & PARRY LLP				
Address	5670 Wilshire Boulevard, Suite 2100				
Address					
City	Los Angeles	State	CA	Zip	90036-5679
Country					
Telephone	(323) 934-2300			Fax	(323) 934-0202

Name	John P. Wagner, Jr.		
Signature		Registration No.	35,398
Date	November 18, 2004	Telephone No.	(408) 938-9060

NOTE: Withdrawal is effective when approved rather than when received. Unless there are at least 30 days between approval of withdrawal and the expiration date of a time period for response or possible extension period, the request to withdraw is normally disapproved.

This collection of information is required by 37 CFR 1.36. 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 12 minutes 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

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Paper No. 33

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
WINTON HILL TECHNICAL CENTER - BOX 161
6110 CENTER HILL AVENUE
CINCINNATI OH 45224

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NOV 1 8 2002

OFFICE OF PETITIONS

In re Application of
Hines, et al.
Application No. 08/383,550
Filed: February 3, 1995
Attorney Docket No. 5006C

DECISION ON PETITION

This is a decision on the petition filed August 27, 2002 (Certificate of Mailing dated August 19, 2002), pursuant to 37 CFR 1.137(b), to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned as a result of petitioner's failure to timely reply to the Notification of Non-Compliance with 37 CFR 1.192(c), mailed on June 18, 2002. This Notification set a period for reply of one month for petitioner to file a "corrected copy of the appealed claims as an appendix" to the brief. No reply having been received, the above identified application became abandoned on July 19, 2002. The mailing of this decision precedes the mailing of a Notice of Abandonment.

With the instant petition, petitioner filed an appendix to the brief containing a corrected copy of the appealed claims, paid the petition fee, and made the proper statement of unintentional delay.

Receipt of the Terminal Disclaimer, submitted with the instant petition, is acknowledged.

The application file is being forwarded to Technology Center 3700 for review of the Appeal Brief by the examiner.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-0272.

Cliff Congo
Petitions Attorney
Office of Petitions
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

OIPE IAP22
JUL 25 2008
PATENT & TRADEMARK OFFICE

Paper No. 29

COMPLETED

Mr. Michael Fogarty
McDermott, Will & Emery
600 13th Street, NW
Washington, DC 20005-3096

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JUL 16 2008

In re Patent No. 5,628,014	:	
Issue Date: May 6, 1997	:	
Application No. 08/383,665	:	DECISION ON PETITION
Filed: February 3, 1995	:	
Attorney Docket No. PNOD-0004	:	

This is a decision on the petition under 37 CFR 1.182 filed on May 14, 2004 and supplemented on September 9, 2004, requesting issuance of a duplicate Letters Patent for the above-identified patent. The delay in responding is regretted.

The petition is **DISMISSED.**

It appears that the petition is signed on behalf of the assignee and compliance with 37 CFR 3.73(b) has not been satisfied. In this regard, the reel and frame number or recordation of the documentary evidence of the chain of title from the original owners to the current assignee was not provided. Further, 37 CFR 3.73(b)(1)(i), requires a statement 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 37 CFR 3.11. Therefore, compliance with 37 CFR 3.73(b) must be satisfied.

A courtesy copy of this decision is being mailed to petitioner. Nevertheless, all future correspondence regarding this decision will be mailed to the address of record. If appropriate, a change of correspondence address should be filed[1].

[1] Petitioner should note that the change of correspondence will not affect the fee address for this patent.

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) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

cc: Albert B.P. Cecchini
Libera, Inc.
111 W 2nd Street – 3rd Floor
Jamestown, NY 14701

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

MAIL

Paper No. 58

COATS & BENNETT, PLLC
P O BOX 5
RALEIGH NC 27602

NOV 0 5 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of
Bengt Y. Persson, et al.
Application No. 08/384,456
Filed: February 2, 1995
For: **MOBILE ASSISTED HANDOVER USING CDMA**

DECISION ON PETITION
TO WITHDRAW HOLDING OF
ABANDONMENT

This is a decision on the petition filed September 2, 2004 to withdraw holding of abandonment pursuant to 37 C.F.R.§ 1.181(a). No fee is required.

The petition is **GRANTED.**

The application was abandoned for failure to respond in a timely and effective manner to the non-final Office action mailed October 24, 2003. A Notice of Abandonment was mailed on August 25, 2004.

Petitioner asserts that a proper response was timely filed on January 26, 2004. In support of the petition, Petitioner has submitted, a copy of Applicant's reply and a date-stamped post card receipt evidencing receipt of the response within the United States Patent & Trademark Office on January 26, 2004.

The original correspondence filed was not matched with the application file and cannot be located. However, M.P.E.P. § 503 states, "[a] post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the U.S.PTO of all the items listed thereon on the date stamped thereon by the PTO." Accordingly, it is concluded that the response was timely filed in the Patent and Trademark Office but not matched with the application file.

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

The application file will be forwarded to the Technology Center's technical support staff for entering the copy of the response submitted with the petition along with the petition for three months extension of time. From there, the file will be forwarded to the examiner for further examination in due course.

Dwayne Bost
Special Program Examiner
Technology Center 2600
Communications

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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JJGJr.: 10-05

Paper No. 18

IRELL & MANELLA
1800 AVENUE OF THE STARS
SUITE 900
LOS ANGELES CA 90067

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OFFICE OF PETITIONS

In re Patent No. 5,790,848	:	
Issued: 4 August, 1998	:	
Application No. 08/384,706	:	DECISION ON PETITION
Filed: 3 February, 1995	:	
Attorney Docket No.: 29815.0800	:	

This is a decision on the petition filed on 22 August, 2005, under 37 C.F.R. §1.378(b) to accept as unavoidably delayed the maintenance fee for Patent No. 5,790,848 (the '848 patent).

PLEASE NOTE:

Petitioner's petition filed on 22 August, 2005, mis-identified the application serial number (as 08/385,706) rather than the correct Application No. 08/384,706. Petitioner is cautioned to correct her records in this regard in order that and future filings my be properly referenced and matched with the file.

In addition, there is no indication of record that Petitioner herein ever was empowered in the instant matter. If Petitioner desires to receive future correspondence regarding this matter, the appropriate power of attorney documentation must be submitted. A courtesy copy of this decision will be mailed to Petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary.

Petitioner must submit a fully executed certificate under 37 C.F.R. 3.73(b) (copy enclosed) evidencing Petitioner's rights to/in the instant matter.

The petition is **DISMISSED**.

NOTES: If reconsideration of this decision is desired, a petition for reconsideration under 37 C.F.R. §1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. See: 37 C.F.R. §1.136(a) or (b) regarding extension(s) of time.

Any such petition for reconsideration must be accompanied by the petition fee as set forth in 37 C.F.R. §1.17(h).

The petition for reconsideration should include an exhaustive attempt to provide the items noted below as lacking.

Thereafter, there will be no further reconsideration or review of the matter undertaken by the Commissioner.

I. BACKGROUND

This patent, which was filed originally on 3 February, 1995, as Application No. 08/384,706, issued on 4 August, 1998, as Patent No. 5,790,848 (the '848 patent). Payment of the first maintenance fee was not timely made. And the twenty-four month period following expiration has elapsed. Therefore, Petitioner's only remedy is a petition under 37 C.F.R. §1.378(b).

Payment Windows

As to the first maintenance fee:

- the first window–for payment of the maintenance fee alone–opened on 4 August, 2001, and closed after midnight Monday, 4 February, 2002;
- the second window–for payment of the maintenance fee and small surcharge–opened on Tuesday, 5 February, 2002, and closed after midnight Monday, 5 August, 2002;
- the third window–for payment of the maintenance fee and the surcharge in connection with an allegation of unintentional delay–opened on Tuesday, 6 August, 2002, and closed after midnight 4 August, 2004;

- the fourth window–for payment of the maintenance fee and the surcharge in connection with an allegation of unavoidable delay–also opened on Tuesday, 6 August, 2002.

Summary of Argument

NOTE: Petitioner requests: "PLEASE KEEP THIS STATEMENT PRIVATE."

However, as Petitioner is well aware, upon issue patent application files are public record, and are therefore open to the public and may be available via the Internet.

Reference is made to the illness of Petitioner and to a bankruptcy event. However, while the medical details are not necessarily pertinent, the exact time periods are required, as are details that indicate how theses events involving Petitioner, who was not the inventor and does not appear to have been an assignee, nonetheless triggered the non-payment of the maintenance fee herein

In this regard, Petitioner is reminded again that patent application files, should they proceed to issue, become public record, and Petitioner may wish to redact private health information, financial accounts information and the like before submission and may wish to substitute such redacted materials with the evidentiary focus as the dates of event for documents submitted and otherwise seek expungement of such private data from Petitioner's application(s).

The sum and substance of the argument presented is that financial collapse of the businesses and Petitioner's subsequent diagnosis with and chemotherapy treatment for cancer prevented the maintenance fee from being paid when due.

Petitioner needs to present a calendar of events commencing on the date when the window opened for payment (August 2001) and through the filing of the instant petition detailing events (with documentation supporting the allegations and calendar) which so resulted in the non-payment of the maintenance fee when due.

Thus, the record is silent and needs to be completed with regard to narrative of events including but not limited to:

- the calendar of events;

- evidence that payment of the maintenance fee was properly calendared;
- identification of an statements from the parties responsible for calendaring and paying the maintenance fees; and
- documents evidencing the adverse financial and health conditions Petitioner alleges resulted in the non-payment of the maintenance fees.

II. STATUES, REGULATIONS, ANALYSIS

Congress has provided in statute as follows:

> **35 U.S.C. 41 Patent fees; patent and trademark search systems.**
> (a) GENERAL FEES. — The Director shall charge the following fees:
> * * *
> (b) MAINTENANCE FEES. — The Director shall charge the following fees for maintaining in force all patents based on applications filed on or after December 12, 1980:
> (1) 3 years and 6 months after grant, $***.
> (2) 7 years and 6 months after grant, $*,***.
> (3) 11 years and 6 months after grant, $*,***.
>
> Unless payment of the applicable maintenance fee is received in the United States Patent and Trademark Office on or before the date the fee is due or within a grace period of 6 months thereafter, the patent will expire as of the end of such grace period. The Director may require the payment of a surcharge as a condition of accepting within such 6-month grace period the payment of an applicable maintenance fee.
> * * *

The regulations at 37 C.F.R. §1.362 provide in pertinent part:

> **§ 1.362 Time for payment of maintenance fees.**
> (a) Maintenance fees as set forth in §§ 1.20(e) through (g) are required to be paid in all patents based on applications filed on or after December 12, 1980, except as noted in paragraph (b) of this section, to maintain a patent in force beyond 4, 8 and 12 years after the date of grant.
> * * *
> (d) Maintenance fees may be paid in patents without surcharge during the periods extending respectively from:

(1) 3 years through 3 years and 6 months after grant for the first maintenance fee,
(2) 7 years through 7 years and 6 months after grant for the second maintenance fee, and
(3) 11 years through 11 years and 6 months after grant for the third maintenance fee.

(e) Maintenance fees may be paid with the surcharge set forth in § 1.20(h) during the respective grace periods after:

(1) 3 years and 6 months and through the day of the 4th anniversary of the grant for the first maintenance fee.
(2) 7 years and 6 months and through the day of the 8th anniversary of the grant for the second maintenance fee, and
(3) 11 years and 6 months and through the day of the 12th anniversary of the grant for the third maintenance fee.

(f) If the last day for paying a maintenance fee without surcharge set forth in paragraph (d) of this section, or the last day for paying a maintenance fee with surcharge set forth in paragraph (e) of this section, falls on a Saturday, Sunday, or a federal holiday within the District of Columbia, the maintenance fee and any necessary surcharge may be paid under paragraph (d) or paragraph (e) respectively on the next succeeding day which is not a Saturday, Sunday, or Federal holiday.
(g) Unless the maintenance fee and any applicable surcharge is paid within the time periods set forth in paragraphs (d), (e) or (f) of this section, the patent will expire as of the end of the grace period set forth in paragraph (e) of this section. A patent which expires for the failure to pay the maintenance fee will expire at the end of the same date (anniversary date) the patent was granted in the 4th, 8th, or 12th year after grant.
(h) The periods specified in §§1.362(d) and (e) with respect to a reissue application, including a continuing reissue application thereof, are counted from the date of grant of the original non-reissue application on which the reissued patent is based. (Emphasis supplied.)

* * *

The regulations at 37 C.F.R. §1.378 provide in pertinent part:

§ 1.378 Acceptance of delayed payment of maintenance fee in expired patent to reinstate patent.
(a) The Commissioner may accept the payment of any maintenance fee due on a patent after expiration of the patent if, upon petition, the delay in payment of the maintenance fee is shown to the satisfaction of the Commissioner to have been unavoidable (paragraph (b) of this section) or unintentional (paragraph (c) of this section) and if the surcharge required by § 1.20(I) is paid as a condition of

accepting payment of the maintenance fee. If the Commissioner accepts payment of the maintenance fee upon petition, the patent shall be considered as not having expired, but will be subject to the conditions set forth in 35 U.S.C. 41(c)(2).
(b) Any petition to accept an unavoidably delayed payment of a maintenance fee filed under paragraph (a) of this section must include:

(1) The required maintenance fee set forth in § 1.20 (e) through (g);
(2) The surcharge set forth in § 1.20(I)(1); and
(3) A showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

* * *

(d) 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. (e) Reconsideration of a decision refusing to accept a maintenance fee upon petition filed pursuant to paragraph (a) of this section may be obtained by filing a petition for reconsideration within two months of, or such other time as set in, the decision refusing to accept the delayed payment of the maintenance fee. Any such petition for reconsideration must be accompanied by the petition fee set forth in § 1.17(h). After decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Commissioner. If the delayed payment of the maintenance fee is not accepted, the maintenance fee and the surcharge set forth in § 1.20(I) will be refunded following the decision on the petition for reconsideration, or after the expiration of the time for filing such a petition for reconsideration, if none is filed. Any petition fee under this section will not be refunded unless the refusal to accept and record the maintenance fee is determined to result from an error by the Patent and Trademark Office.

The commentary at MPEP §2506 states in pertinent part:

2506 Times for Submitting Maintenance Fee Payments [R-2]

Maintenance fees cannot be paid in advance since 35 U.S.C. §41(f) permits maintenance fees to be adjusted every year on October 1 to reflect any fluctuations during the previous 12 months in the Consumer Price Index as determined by the Secretary of Labor.

37 C.F.R. §1.362(d) sets forth the time periods when the maintenance fees for a utility patent can be paid without surcharge. Those periods, referred to generally as the "window period," are the 6-month periods preceding each due date. The "due dates" are defined in 35 U.S.C. §41(b). The window periods are (1) 3 years to 3 ½ years after the date of issue for the first maintenance fee payment, (2) 7 years to 7 ½ years after the date of issue for the second maintenance fee payment, and (3) 11 years to ½ years after the date of issue for the third and final maintenance fee payment. A maintenance fee paid on the last day of a window period can be paid without surcharge. The last day of a window period is the same day of the month the patent was granted 3 years and 6 months, 7 years and 6 months, or 11 years and 6 months after grant of the patent.

37 C.F.R. §1.362(e) sets forth the time periods when the maintenance fees for a utility patent can be paid with surcharge. Those periods, referred to generally as the "grace period," are the 6-month periods immediately following each due date. The grace periods are (1) 3 ½ years and through the day of the 4th anniversary of the grant of the patent, (2) 7 ½ years and through the day of the 8th anniversary of the grant of the patent and, (3) 11 ½ years and through the day of the 12th anniversary of the grant of the patent. A maintenance fee may be paid with the surcharge on the same date (anniversary date) the patent was granted in the 4th, 8th, or 12th year after grant to prevent the patent from expiring.

The commentary at MPEP §2590 states in pertinent part:

2590 Acceptance of Delayed Payment of Maintenance Fee in Expired Patent to Reinstate Patent [R-2] - 2500 Maintenance Fees

* * *

UNAVOIDABLE DELAY

* * *

The required showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly. Furthermore, an adequate showing requires a statement by all persons with direct knowledge of the cause of the delay, setting forth the facts as they know them. Copies of all documentary evidence referred to in a statement should be furnished as exhibits to the statement.

* * *

Thus, evidence that despite reasonable care on behalf of the patentee and/or the patentee's agents, and reasonable steps to ensure timely payment, the maintenance

> fee was unavoidably not paid, could be submitted in support of an argument that the delay in payment was unavoidable. For example, an error in a docketing system could possibly result in a finding that a delay in payment was unavoidable if it were shown that reasonable care was exercised in designing and operating the system and that the patentee took reasonable steps to ensure that the patent was entered into the system to ensure timely payment of the maintenance fees. (Emphasis supplied.)
>
> * * *

No documents and/or statements have been made of record as to the party responsible–Petitioner states that it was the patent holder–for payment of the maintenance fee.

Payment Windows

As to whether Petitioner or party with demonstrable responsibility therefor had in place a system to ensure payment of the first maintenance fee when due for the instant patent:

- within the first window–for payment of the maintenance fee alone–opened on 4 August, 2001, and closed after midnight Monday, 4 February, 2002, as of this writing Petitioner's showing is insufficient;

- within the second window–for payment of the maintenance fee and small surcharge–opened on Tuesday, 5 February, 2002, and closed after midnight Monday, 5 August, 2002, as of this writing Petitioner's showing is insufficient;

- at the opening within the third window–for payment of the maintenance fee and the surcharge in connection with an allegation of unintentional delay–opened on Tuesday, 6 August, 2002, and closed after midnight 4 August, 2004, as of this writing Petitioner's showing is insufficient;

- at the opening of the fourth window–for payment of the maintenance fee and the surcharge in connection with an allegation of unavoidable delay–also opened on Tuesday, 6 August, 2002, in order to satisfy the burden of proof herein, Petitioner would have had to make an adequate showing in one or more of the three periods above, and, as of this writing Petitioner's showing is insufficient.

Direct Evidence

Petitioner must "provide any *direct evidence* proving exactly"[1] what records and systems were in place to satisfy the showing required under 37 C.F.R. §1.378(b). As the court found in Krahn:

> The Commissioner did not abuse his discretion in ruling that this evidence was insufficient to prove an unavoidable delay * * * . The * * * procedure[s] set out in the PTO regulations were specifically designed to provide patent applicants with a clear procedure to protect themselves from exactly the situation which has arisen in this case. Plaintiff failed to follow these procedures. The Commissioner properly ruled that the alternative means employed by the plaintiff were inadequate * * * . Plaintiff still failed to provide any direct evidence proving exactly [his allegations]. The procedures set out in the PTO's regulations are designed to provide the type of direct evidence needed * * * . Had plaintiff's counsel followed these procedures, as a 'prudent and careful man' would have done in conducting 'his most important business,' then he would have been able to produce sufficient evidence to support a showing of unavoidable delay." (Emphasis supplied.)[2]

Duty of Candor

Petitioners always are reminded of the burden of those registered to practice *and* all others who make representations before the Office, *inter alia*, to inquire into the underlying facts of representations made to the Office.[3]

---

[1] See: Krahn v. Commissioner, 15 USPQ2d 1823 (E.D. Va. 1990).

[2] Krahn, at 1825.

[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).

The regulations at 37 C.F.R. §10.18 provide:

§ 10.18 Signature and certificate for correspondence filed in the Patent and Trademark Office.
(a) For all documents filed in the Office in patent, trademark, and other non-patent matters, except for correspondence that is required to be signed by the applicant or party, each piece of correspondence filed by a practitioner in the Patent and Trademark Office must bear a signature by such practitioner complying with the provisions of §1.4(d), §1.4(e), or § 2.193(c)(1) of this chapter.
(b) By presenting to the Office (whether by signing, filing, submitting, or later advocating) any paper, the party presenting such paper, whether a practitioner or non-practitioner, is certifying that—

(1) All statements made therein of the party's own knowledge are true, all statements made therein on information and belief are believed to be true, and all statements made therein are made with the knowledge that whoever, in any matter within the jurisdiction of the Patent and Trademark Office, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any

III. CONCLUSION

Petitioner's factual showing (narrative (with statements/declarations by persons with first-hand knowledge of events and transactions) and documentary) is, as of this writing, insufficient.

Accordingly, as of this writing, Petitioner has failed to make the showing necessary under the regulation, and the petition under 37 C.F.R. §1.378(b) hereby is **dismissed**.

In any future filing, this showing should include, but is not limited to, docket records, tickler reports, and file jacket entries for this application, and documents regarding the alleged cause of the delay and copies of any documents referred to in Petitioner's statement as to the cause of the unavoidable delay are required. All the causes which contributed to the failure to timely pay the maintenance fee must be presented and supported with appropriate evidence.[4] (In general, a Petitioner should identify the party(ies) responsible for making the payment: A showing must be made (with supporting documents) outlining the efforts made to ensure timely payment of the maintenance fee--including scheduling and calendaring information, appointment of an individual with the authority and responsibility to pay the fee, and detailing of the causes for a failure in that process.)

---

false, fictitious or fraudulent statement or entry, shall be subject to the penalties set forth under 18 U.S.C. 1001, and that violations of this paragraph may jeopardize the validity of the application or document, or the validity or enforceability of any patent, trademark registration, or certificate resulting therefrom; and

(2) To the best of the party's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, that —

(i) The paper is not being presented for any improper purpose, such as to harass someone or to cause unnecessary delay or needless increase in the cost of prosecution before the Office;

(ii) The claims and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(iii) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(iv) The denials of factual contentions are warranted on the evidence, or if specifically so identified, are reasonably based on a lack of information or belief.

(c) Violations of paragraph (b)(1) of this section by a practitioner or non-practitioner may jeopardize the validity of the application or document, or the validity or enforceability of any patent, trademark registration, or certificate resulting therefrom. Violations of any of paragraphs (b)(2)(i) through (iv) of this section are, after notice and reasonable opportunity to respond, subject to such sanctions as deemed appropriate by the Commissioner, or the Commissioner's designee, which may include, but are not limited to, any combination of —

(1) Holding certain facts to have been established;

(2) Returning papers;

(3) Precluding a party from filing a paper, or presenting or contesting an issue;

(4) Imposing a monetary sanction;

(5) Requiring a terminal disclaimer for the period of the delay; or

(6) Terminating the proceedings in the Patent and Trademark Office.

(d) Any practitioner violating the provisions of this section may also be subject to disciplinary action. See § 10.23(c)(15).

[Added 50 FR 5175, Feb. 6, 1985, effective Mar. 8, 1985; para. (a) revised, 58 FR 54494, Oct. 22, 1993, effective Nov. 22, 1993; paras. (a) & (b) revised, paras. (c) & (d) added, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997; para. (a) revised, 69 FR 56481, Sept. 21, 2004, effective Oct. 21, 2004]

[4] The showing must also enumerate the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly. The showing can be verified by using the attached petition form which includes a declaration according to 37 C.F.R. §1.68. Statements from all persons who contributed to the delay are also required.

Further correspondence with respect to this matter should be addressed as follows:[5]

By mail: Commissioner for Patents[6]
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: IFW Formal Filings
(571) 273-8300
ATTN.: Office of Petitions

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

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3214.

John J. Gillon, Jr.
Senior Attorney
Office of Petitions

cc:
LOUISE J. WANNIER
1446 ROSE VILLA STREET
PASADENA, CA 91106

Encl: Statement under 37 C.F.R. §3.73(b)

[5] On July 15, 2005, the Central Facsimile (FAX) Number changed from (703) 872-9306 to (571) 273-8300. Faxes sent to the old number were routed to the new number only until September 15, 2005. After September 15, 2005, the old number is no longer be in service and (571) 273-8300 will be the only facsimile number recognized for centralized delivery. (For further information. see: http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/cfax062005.pdf .)

[6] To determine the appropriate addresses for other subject-specific correspondence, refer to the USPTO Web site at www.uspto.gov.

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

JJGJr.: 08-06

Paper No. 20

IRELL & MANELLA
1800 AVENUE OF THE STARS
SUITE 900
LOS ANGELES CA 90067

COPY MAILED

SEP 11 2006

OFFICE OF PETITIONS

In re Patent No. 5,790,848
Issued: 4 August, 1998
Application No. 08/384,706
Filed: 3 February, 1995
Attorney Docket No.: 29815.0800

DECISION ON PETITION

This is a decision on the petition filed on 6 January, 2006, under 37 C.F.R. §1.378(b) to accept as unavoidably delayed the maintenance fee for Patent No. 5,790,848 (the '848 patent).

The Office regrets the delay in addressing this matter, however, the file was received by the attorneys in the Office of Petitions only at this writing.

PLEASE NOTE:

There is no indication of record that Petitioner herein ever was empowered in the instant matter. If Petitioner desires to receive future correspondence regarding this matter, the appropriate power of attorney documentation must be submitted. A courtesy copy of this decision will be mailed to Petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary.

Petitioner also must submit a fully executed certificate under 37 C.F.R. 3.73(b) (copy enclosed) evidencing Petitioner's rights to/in the instant matter.

While telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214, it is noted that all practice before the Office is in writing (see: 37 C.F.R. §1.2[1]) 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.
Senior Attorney
Office of Petitions

cc:
LOUISE J. WANNIER
1446 ROSE VILLA STREET
PASADENA, CA 91106

Encl: Statement under 37 C.F.R. §3.73(b)
Maintenance Fee Address Form

[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

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

PAPER NO. 21

LOUISE J. WANNIER
LJM SOFTWARE, INC.
1446 ROSE VILLA STREET
PASADENA, CA 91106

COPY MAILED

MAY 29 2007

OFFICE OF PETITIONS

In re Patent No. 5,790,848
Issue Date: August 4, 1998
Application No. 08/384,706
Filed: February 3, 1995
Attorney Docket No. 151931.0004/
Patentee(s): Scott Wlaschin

DECISION ON PETITION
UNDER 37 CFR 1.378(b)

CORRECTED DECISION

The Petition Decision mailed on September 11, 2006 for the above-identified patent is hereby VACATED.

This is a CORRECTED decision replacing the decision mailed on September 11, 2006 on the RENEWED petition under 37 CFR 1.378(b), filed January 6, 2006, to accept an unavoidably delayed payment of a maintenance fee for the above-identified patent.

The petition is **DISMISSED**.

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. No extension of this 2-month time limit can be granted under 37 CFR 1.136(a) or (b). **Any such petition for reconsideration must be accompanied by the petition fee of $400 as set forth in 37 CFR 1.17(f).** The petition for reconsideration should include an exhaustive attempt to provide the lacking item(s) noted below, since, after a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Director.

A first petition to revive under 37 CFR 1.378(b) was filed on August 22, 2005 and was dismissed on November 4, 2005.

A second petition decision was mailed on September 11, 2006. While the petition decision dated September 11, 2006 stated that the decision was in response to a petition filed on January 6, 2006, the file record shows no such petition on that date.

An investigation reveals that petitioner submitted a document on December 5, 2005 for a renewed petition under 37 CFR 1.378(b) purportedly for three patents numbers 5,893,087, 5,850,522, and 5,790,848. This is not acceptable. 37 CFR 1.4(b) states that "each file must be complete in itself, a separate copy of every paper to be filed in a patent, patent file, or other proceeding must be furnished for each file to which the paper pertains, even though the contents of the papers filed in two or more files may be identical." Accordingly, USPTO recorded the communication filed on December 5, 2005 with the first listed patent number 5,893,087. No separate copy of the renewed petition has been recorded with the second or third listed patent numbers.

Since there is evidence that petitioner attempted to renew the petition decision dated November 4, 2005, petitioner should promptly file a separate copy of the renewed petition with the appropriate identifier(s) in the instant patent, i.e. do not combine petitions for different patents in one communication. Before submitting a renewed petition in the instant case, it is recommended that petitioner review the contemporaneous decision in response to the petition filed on December 5, 2005 in patent number 5,893,087.

Since the petition decision dated September 11, 2006 has been vacated and in view of the present corrected decision, the status of this patent is EXPIRED. If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. No extension of this 2-month time limit can be granted under 37 CFR 1.136(a) or (b). **Any such petition for reconsideration must be accompanied by the petition fee of $400 as set forth in 37 CFR 1.17(f).** Petitioner is reminded that any renewed petition and the required fee(s) should be filed separately for each patent desiring reconsideration.

Petitioner is also reminded that pursuant to 37 CFR 1.2 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.

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 Amelia Au at (571) 272-7414.

Charles Pearson
Director
Office of Petitions

Cc: TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO CA 94111-3834

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

In re Patent No. 5531863
Issue Date: July 2,1996
Application No. 08385792
Filed: February 9,1995
Attorney Docket No. TPP-29028B

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed August 29,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 29,2008 . 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.

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)
5,531,863	1996-07-02	08/385,792	1995-02-09	8691.905.US02X

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

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	/Thomas P. Pavelko/	Date (YYYY-MM-DD)	2008-08-29
Name	Thomas P. Pavelko	Registration Number	31689

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 record s.

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.

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)
5634472	1997-06-03	08385949	1995-02-09	862

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

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	/david l king/	Date (YYYY-MM-DD)	2009-07-14
Name	David L. King	Registration Number	33925

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

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

In re Patent No. 5634472
Issue Date: June 3,1997
Application No. 08385949
Filed: February 9,1995
Attorney Docket No. 862

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed July 14,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 July 14,2009 . 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)
5,648,969	1997-07-15	08/388,110	1995-02-13	1450-14U

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

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	/Alan M. Weisberg/	Date (YYYY-MM-DD)	2009-09-04
Name	Alan M. Weisberg	Registration Number	43982

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

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

In re Patent No. 5648969
Issue Date: July 15,1997
Application No. 08388110
Filed: February 13,1995
Attorney Docket No. M-3207-US

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed September 4,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 September 4,2009 . 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.

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)
5,542,819	1996-08-06	08/388,610	1995-02-14	PC-KOF

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

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	/Brian S. Steinberger/	Date (YYYY-MM-DD)	2008-09-12
Name	Brian S. Steinberger	Registration Number	36423

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 record s.

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

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

In re Patent No. 5542819
Issue Date: August 6,1996
Application No. 08388610
Filed: February 14,1995
Attorney Docket No. 364.014

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed September 12,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 September 12,2008 . 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

HS
03192/000A887

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Paper No. 15

DARBY & DARBY
805 THIRD AVENUE
NEW YORK, NY 10022

DUE: December 2, 2003

Docketed on 10/10 by DP for

Docketed without file ☐

Attorney DL

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OCT 02 2003

4-2-04

OFFICE OF PETITIONS

In re Application of
Fischer et al.
Application No. 08/392,127
Filed: February 22, 1995
Attorney Docket No. 2338/0A887

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed July 29, 2003, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration 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.

This application became abandoned for failure to timely reply to the non-final Office action mailed November 12, 1996. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, this application became abandoned on February 13, 1997. A Notice of Abandonment was mailed May 27, 1997.

A grantable petition under 37 CFR 1.137(b) must be accompanied by:
(1) the required reply,
(2) the petition fee,
(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) a terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

The instant petition does not satisfy requirements (3) and (4) above. 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 delay in filing the instant petition raises a question as to whether the entire delay in filing a petition under 37 CFR 1.137(b) was unintentional. Petitioner should provide a full explanation for the delay from the date of abandonment until the date the instant petition was filed. Petitioner should provide evidence to establish the entire delay was unintentional within the meaning of 35 U.S.C. §41(a)(7) and 37 CFR 1.137(b).[1]

DISMISSED

[1] See In re Application of G, 11 USPQ2d 1378, 1380 (Comm'r Pats. 1989).

Since the application was filed prior to June 8, 1995, petitioner is also required to submit a terminal declaimer and the proper fee.

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 facsimile: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
Arlington, VA 22202

Telephone inquiries should be directed to Paralegal Liana Chase at (703) 306-0482.

Frances Hicks
Petitions Examiner
Office of Petitions
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

TO: Henry Sternberg

ATTY REVIEWED LJD

DATE: _____

Paper No. 18

DARBY AND DARBY
805 THIRD AVENUE
NEW YORK, NY 10022

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FEB 20 2004

OFFICE OF PETITIONS

In re Application of
Fischer et al.
Application No. 08/392,127
Filed: February 22, 1995
Attorney Docket No. 2338/000A887-US0

ON PETITION

This is a decision on the renewed petition under 37 C.F.R. § 1.137(b), filed December 2, 2003, to revive the above-identified application.

The petition is **granted.**

This application became abandoned for failure to timely reply within three months to the non-final Office action mailed November 12, 1996. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, this application became abandoned on February 13, 1997. A Notice of Abandonment was mailed on May 27, 1997.

Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b).

The file is now being forwarded to Technology Center 2600 for further examination on the merits.

Telephone inquiries should be directed to the undersigned at (703) 306-0482.

Liana Chase
Petitions Examiner
Office of Petitions
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
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DIW Nov-05

Paper No. 29

MERCK & CO INC
PATENT DEPARTMENT
P O BOX 2000 - RY60-30
RAHWAY NJ 07065-0907

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NOV 0 4 2005

OFFICE OF PETITIONS

In re Patent No. 5,565,473	:	
Issued: 15 October, 1996	:	
Application No. 08/392,592	:	DECISION ON PETITION
Filed: 23 February, 1995	:	
Atty Docket No. 00001.014300	:	

This is a decision on the petition under 37 CFR 1.182, filed on 8 August, 2005, which is treated as a petition to withdraw the Terminal Disclaimer filed on 2 October, 1995.

Petitioner asserts that the previously filed terminal disclaimer contained a typographical error in the second line of page 2, and also inadvertently miscaptioned the name of the assignee. Petitioner has filed a substitute Terminal Disclaimer with the present petition correcting the errors noted above. As such, petitioner requests that the Terminal Disclaimer filed on 2 October, 1995, be withdrawn.

The petition is **granted**.

The address listed on the petition is different than the correspondence address listed in Office records. A courtesy copy of this decision will be mailed to the address listed on the petition. All future correspondence, however, will be mailed solely to the address of record.

The application file is being forwarded to Technology Center 1600 For correction of PALM and file records consistent with this decision.

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

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

cf: FITZPATRICK, CELLA, HARPER & SCINTO
30 ROCKEFELLER PLAZA
NEW YORK NY 10112-3800

OIPE
AUG 0 1 2000
JC13
PATENT & TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

PD-3033
Johnson & Johnson
WY

Patent Cooperation Treaty Legal Office

Address: Assistant Commissioner for Patents
Box PCT
Washington, D.C. 20231

20 MAR 1997

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Loeb & Loeb
1880 Century Park East, Fifth Floor
Los Angeles, CA 90067

In re Application of
SMITH et al
Application No.: 08/392,934
PCT No.: PCT/US93/08699
Int. Filing Date: 15 September 1993
Priority Date: 15 September 1992
Attorney Docket No.: 7586D3033
For: IMMUNOREACTIVE PEPTIDES FROM EPSTEIN-BARR VIRUS

DECISION ON

RENEWED PETITION

ORIGINAL DOCUMENT COPY KEPT
BY DOCKET CLERK FOR DOCKETING

APR 0 2 1997

BY JB

This is a decision on applicants' "RENEWED PETITION UNDER 37 CFR 1.48(a)" filed in the Patent and Trademark Office (PTO) on 28 October 1996, and applicants' "REQUEST FOR WITHDRAWAL OF NOTIFICATION OF ABANDONMENT" filed in the PTO on 12 December 1996.

BACKGROUND

On 26 December 1995, applicants filed an initial petition under 37 CFR 1.48(a) requesting the addition of a fourth inventor, Dr. Susan Varghese, to the application.

On 23 May 1996, this Office mailed a decision dismissing the petition on the grounds that applicants had not submitted an acceptable statement of facts, an acceptable declaration of the inventors, nor an acceptable written consent of the assignee.

On 28 October 1996, applicants filed the present renewed petition which was accompanied by, inter alia: a petition and fee for a three month extension of time; a verified

statement of facts executed by the three originally named inventors; a declaration of John R. Wetherell in support of the renewed petition; a declaration of the inventors; a copy of an assignment document; and a statement of assent of the assignees.

On 20 November 1996, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF ABANDONMENT (Form PCT DO/EO/909) indicating that the application was abandoned for failure to respond to the 23 May 1996 decision.

On 12 December 1996, applicants filed the present request which urges that the abandonment of the application should be withdrawn on the grounds that a response to the decision was timely filed.

DISCUSSION

WITHDRAWAL OF ABANDONMENT

A review of the application file reveals that a response to the 23 May 1996 decision was timely filed on 28 October 1996. As such the mailing of the Form PCT DO/EO/909 was in error.

PETITION UNDER 37 CFR 1.48(a)

As set forth in the prior decision, a petition under 37 CFR 1.48(a) must be accompanied by: (1) a statement of fact verified by the original named inventor or inventors establishing when the error, without deceptive intention, was discovered and how it occurred; (2) an oath or declaration by each actual inventor or inventors as required by 37 CFR 1.63; (3) the fee set forth in 37 CFR 1.17(h); and, (4) the written consent of any assignee. A review of the application file, and specifically the present renewed petition, reveals that applicants have now satisfied items (1)-(3) above.

With regards to item (4) above, a review of the "ASSENT OF ASSIGNEE TO ADDITION TO ORIGINALLY NAMED INVENTORS" reveals that it in not acceptable in that it is not in the form of a verified statement.

Therefore, in that item (4) above still has not been satisfied, the petition may not be properly granted at this time.

CONCLUSION

For the reasons above, applicants' request for withdrawal of the abandonment of the application is **GRANTED**.

The holding of abandonment is hereby **WITHDRAWN**, and the notification mailed 20 November 1996, is hereby **VACATED**.

Also for the reasons above, the renewed petition under 37 CFR 1.48(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Second Renewed Petition Under 37 CFR 1.48(a)". No additional petition fee is required.

A proper response must include an acceptable consent of the assignee in the form of a verified statement.

Extensions of time may be obtained under 37 CFR 1.136(a).

Please direct further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, DC 20231, and address the contents of the letter to the attention of the PCT Legal Office.

Richard R. Cole
Legal Examiner
PCT Legal Office

(703)305-6639
RRC:rrc

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

Paper No. 58

Emma R. Dailey
WOODCOCK WASHBURN KURTZ MACKIEWICZ & NORRIS LLP
One Liberty Place
46th Floor
Philadelphia, PA 19103

COPY MAILED

DEC 09 2004

OFFICE OF PETITIONS

In re Application of :
Smith et al. :
Application No. 08/392,934 : DECISION
International Filing Date: : ON PETITION
September 15, 1993 :
371 Date: October 28, 1996 :
Title of Invention: :
IMMUNOREACTIVE PEPTIDES FROM :
EPSTEIN-BARR VIRUS :

This is a decision in response to the Petition for Revival of an Application Abandoned Unintentionally Under 37 CFR 1.137(b), filed November 30, 2004.

This Petition is hereby **dismissed**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. **This time period may not be extended.**

Background:

Applicant filed a Request for Continued Examination (RCE) under 37 CFR 1.114 on December 18, 2001, in the above-identified application, which is the National Stage of an International Application filed on September 15, 1993. The RCE was improper because the provisions of 37 CFR 1.114 do not apply to an international application filed under 35 U.S.C. 363 before June 8, 1995. See 37 CFR 1.114(e)(3).

A request for continued examination is not a type of new application filing. See Request for Continued Examination Practice and Changes to Provisional Application Practice, Final Rule, 65 Fed. Reg. 50092, 50097 (August 16, 2000). The Office cannot convert an improper RCE to an application, such as a continuing application under 37 CFR 1.53(b) or (d). An improper RCE will not operate to toll the running of any time period set in the previous Office action for reply to avoid abandonment of the application. See Manual for Patent Examining Procedure

(MPEP) 706.07(h), page 700-70, subsection III.A., "Treatment of Improper RCE", (8th Ed. 2001).

In the instant case, a final Office action was mailed on June 28, 2001. Under 35 U.S.C. § 133, an applicant has six (6) months to reply to an Office action. Upon failure to prosecute the application within six months of notice of the Office action, the application shall be regarded as abandoned. This statutory requirement may not be waived by the Office. The filing of the improper RCE on December 18, 2001, did not toll the time period set forth in the Office action mailed on June 28, 2001. Thus, the application became **abandoned** on **December 29, 2001** for the failure to reply to the final Office action mailed on June 28, 2001.

The Office, however, mistakenly treated the improper RCE as a proper RCE and reopened the prosecution of the application. A Supplemental Response was filed December 18, 2001. A non-final Office action was mailed on March 8, 2002. A reply to the non-final Office action was filed on August 12, 2002. An Ex Parte Quayle action was mailed October 29, 2002. An Amendment in response to the Ex Parte Quayle action was filed on December 2, 2002. A Notice of Allowance was mailed on February 20, 2003.

Applicant was advised in a Notice Regarding Improper RCE, mailed November 5, 2004, the the RCE was improper, and advised to file a petition under 37 CFR 1.137(b) and a terminal disclaimer and fee as set forth in 37 CFR 1.321 because the application was filed before June 8, 1995.

The instant petition

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (**1**) the required reply (unless previously filed); (**2**) the petition fee required by 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**) if required, a terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)). Applicant lacks item (**1**).

As to item (**4**), Applicant files the instant petition but has failed to include the terminal disclaimer as required by 37 CFR 1.137(d). A terminal disclaimer and fee as set forth in 37 CFR 1.321 is required.

Any request for reconsideration of petition under 37 CFR 1.137(b) should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

By FAX: (703) 872-9306
Attn: Office of Petitions

By hand: 220 20th Street S.
Customer Window
Crystal Plaza Two, Lobby Room 1B03
Arlington, VA 22202

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

Derek L. Woods
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

Emma R. Dailey
WOODCOCK WASHBURN KURTZ MACKIEWICZ & NORRIS LLP
One Liberty Place
46th Floor
Philadelphia, PA 19103

COPY MAILED

MAY 13 2005

OFFICE OF PETITIONS

In re Application of	:	
Smith et al.	:	
Application No. 08/392,934	:	DECISION
International Filing Date:	:	ON PETITION
September 15, 1993	:	
Attorney Docket Number: 01-3033	:	
371 Date: October 28, 1996	:	
Title of Invention:	:	
IMMUNOREACTIVE PEPTIDES FROM	:	
EPSTEIN-BARR VIRUS	:	

This is a decision in response to the Request for Reconsideration of Petition Under 37 CFR 1.137(b), filed February 7, 2005.

This Petition is hereby **granted**.

Background:

Applicants filed a Request for Continued Examination (RCE) under 37 CFR 1.114 on December 18, 2001, in the above-identified application, which is the National Stage of an International Application filed on September 15, 1993. The RCE was improper because the provisions of 37 CFR 1.114 do not apply to an international application filed under 35 U.S.C. 363 before June 8, 1995. See 37 CFR 1.114(e)(3).

A request for continued examination is not a type of new application filing. See Request for Continued Examination Practice and Changes to Provisional Application Practice, Final Rule, 65 Fed. Reg. 50092, 50097 (August 16, 2000). The Office cannot convert an improper RCE to an application, such as a continuing application under 37 CFR 1.53(b) or (d). An improper RCE will not operate to toll the running of any time period set in the previous Office action for reply to avoid abandonment of the application. See Manual for Patent Examining Procedure (MPEP) 706.07(h), page 700-70, subsection III.A., "Treatment of Improper RCE", (8th Ed. 2001).

In the instant case, a final Office action was mailed on June 28, 2001. Under 35 U.S.C. § 133, an applicant has six (6) months to reply to an Office action. Upon failure to prosecute the application within six months of notice of the Office action, the application shall be regarded as abandoned. This statutory requirement may not be waived by the Office. The filing of the improper RCE on December 18, 2001, did not toll the time period set forth in the Office action mailed on June 28, 2001. Thus, the application became **abandoned** on **December 29, 2001** for the failure to reply to the final Office action mailed on June 28, 2001.

The Office, however, mistakenly treated the improper RCE as a proper RCE and reopened the prosecution of the application. A Supplemental Response was filed December 18, 2001. A non-final Office action was mailed on March 8, 2002. A reply to the non-final Office action was filed on August 12, 2002. An Ex Parte Quayle action was mailed October 29, 2002. An amendment in response to the Ex Parte Quayle action was filed on December 2, 2002. A Notice of Allowance was mailed on February 20, 2003.

Applicants were advised in a Notice Regarding Improper RCE, mailed November 5, 2004, the RCE was improper, and advised to file a petition under 37 CFR 1.137(b) and a terminal disclaimer and fee as set forth in 37 CFR 1.321 because the application was filed before June 8, 1995.

Applicants filed a petition to revive the application based upon unintentional abandonment of the application on November 3, 2004. The petition was dismissed in a Decision mailed December 9, 2004, for failing to meet the requirements of a grantable petition under 37 CFR 1.137(b).

The instant petition

Under 37 CFR 1.137(b), a petition requesting that the application be revived on the grounds of unintentional delay must be filed promptly after the applicant becomes aware of the abandonment and must be accompanied by: (1) the required reply, unless previously filed, (2) the petition fee required by law, (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", and (4) a terminal disclaimer (and fee set forth in 37 CFR 1.20(d)) is required pursuant to paragraph (c) of this section (for applications filed before June 8, 1995).

Applicants have satisfied Items (1) through (4). With regard to subsection (4), since the above-identified application is a utility application filed before June 8, 1995, 37 CFR 1.137(c) requires a terminal disclaimer dedicating to the public a terminal part of any term of any patent granted on the above-identified application or any patent granted on any continuing application that contains a specific reference under 35 U.S.C. 120, 121, or 365(c) to the above-identified application. The period to be disclaimed will be a terminal part of the patent to be granted equivalent to the period of abandonment. The period of abandonment will be computed to be the number of months lapsed from the date of abandonment to the date when this application issued as a patent. A Terminal disclaimer fee of $130 is required and has been provided. The Terminal Disclaimer filed on February 7, 2005 has been accepted.

All of the requirements of 37 CFR 1.137(b) have now been met. Accordingly, applicants' petition to revive is granted.

The application is being forwarded to the Office of Patent Publication for processing into a patent.

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

Derek L. Woods
Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: X

DATE : June 09, 2008

TO SPE OF : ART UNIT 1644

SUBJECT : Request for Certificate of Correction for Appl. No.: 08/392934 Patent No.: 7060283 B1

A response is requested with respect to a request for a certificate of correction.

With respect to the change(s) requested to correct Office and/or Applicant's errors, should the patent read as shown in the certificate of correction attached herewith or the COCIN document(s), in IFW images for the above-identified patented application? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

If the response is for an IFW, within 7 days, please complete and forward the response, to the employee (named below) via scanning into application images, using document code COCX.

DO NOT SENT TO ATTORNEY

If the response is for a paper file wrapper, please complete the response and forward the response with the paper file wrapper, to the employee (named below), within 7 days, to:

Certificates of Correction Branch (CofC)
South Tower - 9A22
Palm Location 7580

You can fax the Directors/SPE response to 571-270-9990

LAMONTE NEWSOME
Certificates of Correction Branch
703-308-9390 ext. 112

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: _____

_____

_____

_____

_____

Eileen B. O'Hara — **SPE**

1644 — **Art Unit**

RECEIVED
CENTRAL FAX CENTER
APR 27 2007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: REECE et al.	Group Art Unit:
Patent No.: 5,915,214	Examiner:
Granted: June 22nd, 1999	

For: MOBILE COMMUNICATION SERVICE PROVIDER SELECTION SYSTEM

CERTIFICATE OF TRANSMISSION UNDER 37 CFR 1.8
I hereby certify that this correspondence is being facsimile transmitted the United States Patent and Trademark Office at (571) 273-8300 on April 27, 2007.

Signature: Courtney Schrock

PETITION UNDER 37 C.F.R. 1.182
REQUEST FOR REPLACEMENT PATENT GRANT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The original grant copy of US 5,915,214 (referenced above) was lost.

It is respectfully requested that a Replacement Patent Grant be issued and mailed to the current assignee at:

650 Castro Street, Suite 120-333
Mountain View, CA 94041

A PTO Form 2038 enclosing the Petition fees under 37 CFT 1.17(f) and a Petition Fee Transmittal Form are attached herewith.

04/30/2007 HLE333 00000063 08393422
01 FC:1462 400.00 OP

PAGE 1/4 * RCVD AT 4/27/2007 1:14:49 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-6/10 * DNIS:2738300 * CSID: * DURATION (mm-ss):00-50

Respectfully submitted,

Date: April 27, 2007

41,923

Wilfred Lam (Reg. No.)
Attorney for Assignee
Mainstream Scientific, LLC
650 Castro Street, Suite 120-333
Mountain View, CA 94041

PAGE 2/4 * RCVD AT 4/27/2007 1:14:49 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-6/10 * DNIS:2738300 * CSID: * DURATION (mm-ss):00-50

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APR 27 2007

PTO/SB/17p (04-07)
Approved for use through 09/30/2007. 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 displays a valid OMB control number.

PETITION FEE
Under 37 CFR 1.17(f), (g) & (h)
TRANSMITTAL
(Fees are subject to annual revision)

Send completed form to: Commissioner for Patents
P.O. Box 1450, Alexandria, VA 22313-1450

Application Number	08/393,422
Filing Date	2/23/1995
First Named Inventor	Richard Rece
Art Unit	2741
Examiner Name	
Attorney Docket Number	

Enclosed is a petition filed under 37 CFR 1.182 that requires a processing fee (37 CFR 1.17(f), (g), or (h)). Payment of $ 400.— is enclosed.

This form should be included with the above-mentioned petition and faxed or mailed to the Office using the appropriate Mail Stop (e.g., Mail Stop Petition), if applicable. *For transmittal of processing fees under 37 CFR 1.17(i), see form PTO/SB/17i.*

Payment of Fees (small entity amounts are NOT available for the petition fees)

☐ The Commissioner is hereby authorized to charge the following fees to Deposit Account No._____:
☐ petition fee under 37 CFR 1.17(f), (g) or (h) ☐ any deficiency of fees and credit of any overpayments
Enclose a duplicative copy of this form for fee processing.

☐ Check in the amount of $_____ is enclosed.

☑ Payment by credit card (Form PTO-2038 or equivalent enclosed). Do not provide credit card information on this form.

Petition Fees under 37 CFR 1.17(f): Fee $400 Fee Code 1462
For petitions filed under:
§ 1.36(a) - for revocation of a power of attorney by fewer than all applicants
§ 1.53(e) - to accord a filing date.
§ 1.57(a) - to accord a filing date.
§ 1.182 - for decision on a question not specifically provided for.
§ 1.183 - to suspend the rules.
§ 1.378(e) - for reconsideration of decision on petition refusing to accept delayed payment of maintenance fee in an expired patent.
§ 1.741(b) - to accord a filing date to an application under § 1.740 for extension of a patent term.

Petition Fees under 37 CFR 1.17(g): Fee $200 Fee Code 1463
For petitions filed under:
§ 1.12 - for access to an assignment record.
§ 1.14 - for access to an application.
§ 1.47 - for filing by other than all the inventors or a person not the inventor.
§ 1.59 - for expungement of information.
§ 1.103(a) - to suspend action in an application.
§ 1.136(b) - for review of a request for extension of time when the provisions of section 1.136(a) are not available.
§ 1.295 - for review of refusal to publish a statutory invention registration.
§ 1.296 - to withdraw a request for publication of a statutory invention registration filed on or after the date the notice of intent to publish issued.
§ 1.377 - for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of a patent.
§ 1.550(c) - for patent owner requests for extension of time in ex parte reexamination proceedings.
§ 1.956 - for patent owner requests for extension of time in Inter partes reexamination proceedings.
§ 5.12 - for expedited handling of a foreign filing license.
§ 5.15 - for changing the scope of a license.
§ 5.25 - for retroactive license.

Petition Fees under 37 CFR 1.17(h): Fee $130 Fee Code 1464
For petitions filed under:
§ 1.19(g) - to request documents in a form other than that provided in this part.
§ 1.84 - for accepting color drawings or photographs.
§ 1.91 - for entry of a model or exhibit.
§ 1.102(d) - to make an application special.
§ 1.138(c) - to expressly abandon an application to avoid publication.
§ 1.313 - to withdraw an application from issue.
§ 1.314 - to defer issuance of a patent.

Signature

April 27, 2007
Date

WILFRED LAM
Typed or printed name

41,923
Registration No., if applicable

This collection of information is required by 37 CFR 1.17. 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 5 minutes 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

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

BRAD A. ARMSTRONG
P.O. BOX 1419
PARADISE, CA, 95967

MAILED

SEP 25 2009

OFFICE OF PETITIONS

In re Patent No. **5,565,891**
Issue Date: October 15, 1996
Application No. 08/393,459
Filed: February 23, 1995
Attorney Docket No.

DECISION ON PETITION
UNDER 37 CFR 1.378(c)

This is a decision on the petition under 37 CFR 1.378(c), filed November 4, 2008, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired at midnight on October 15, 2008 for failure to pay the 11½ year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR I.362(e), the petition was timely filed under the provisions of 37 CFR I.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

Petitioner will not receive future correspondence related to maintenance fees for the patent unless a "Fee Address" indication form (see PTO/SB/47) and Request for Customer Number (see PTO/SB/125) are submitted.

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

The patent file is being forwarded to Files Repository.

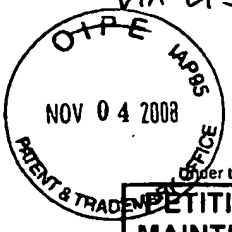
Brian W. Brown
Petitions Examiner
Office of Petitions

Cc: **BRAD A. ARMSTRONG**
15487 JOSEPH ROAD
TYLER, TX 75707

11-5-08

VIA US EXPRESS MAIL # EH 479 057 455 U.S.

DAC / IFW / $



PTO/SB/66 (08-08)
Approved for use through 04/30/2009. 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 a valid OMB control number.

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))

Docket Number (Optional)

Mail to: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
Fax: (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

Patent No. 5,565,891 Application Number 08/393459

Issue Date Oct. 15, 1996 Filing Date Feb. 23, 1995

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number (or reissue patent number, if a reissue) and (2) the application number of the actual U.S. application (or reissue 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).

Also complete the following information, if applicable

The above - identified patent:

☐ is a reissue of original Patent No. _____, original issue date _____; original application number _____, original filing date _____.

☐ resulted from the entry into the U.S. under 35 U.S.C. 371 of international application _____ filed on _____

CERTIFICATE OF MAILING ~~(37 CFR 1.8(a))~~ EXPRESS MAIL

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as ~~first class~~ EXPRESS MAIL mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, or facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below.

Oct 4, 2008
MAILED Date

Brad A. Armstrong
Signature

BRAD A. ARMSTRONG
Typed or printed name of person signing Certificate

VIA U.S. EXPRESS MAIL # EH 479 057 455 U.S.

Adjustment date: 09/28/2009 LDIEP1
11/06/2008 LTRUONG 00000003 5565891
01 FC:1599 -5750.00 OP

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. SEND TO: Mail Stop Petition, 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.

11/06/2008 LTRUONG 00000003 5565891
01 FC:1599 5750.00 OP

09/28/2009 LDIEP1 00000003 5565891
02 FC:1558 4110.00 OP
02 FC:1551 1640.00 OP

PTO/SB/66 (08-08)
Approved for use through 04/30/2009. 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 a valid OMB control number.

1. SMALL ENTITY

☐ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

2. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☒ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g).

3. MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition, unless it was paid earlier.

NOT Small Entity			Small Entity		
Amount	Fee	(Code)	Amount	Fee	(Code)
☐ $_____	3 1/2 yr fee	(1551)	☐ $_____	3 1/2 yr fee	(2551)
☐ $_____	7 1/2 yr fee	(1552)	☐ $_____	7 1/2 yr fee	(2552)
☒ $ 4110.00	11 1/2 yr fee	(1553)	☐ $_____	11 1/2 yr fee	(2553)

MAINTENANCE FEE BEING SUBMITTED $ 4110.00

4. SURCHARGE

The surcharge required by 37 CFR 1.20(i)(2) of $ 1640.00 (Fee Code 1558) must be paid as a condition of accepting unintentionally delayed payment of the maintenance fee.

SURCHARGE BEING SUBMITTED $ 1640.00

5. MANNER OF PAYMENT

☒ Enclosed is a check for the sum of $ 5750.00 .

☐ Please charge Deposit Account No._____ the sum of $_____.

☐ Payment by credit card. Form PTO-2038 is attached.

6. AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY

☐ The Director is hereby authorized to charge any maintenance fee, surcharge or petition deficiency to Deposit Account No._____.

7. OVERPAYMENT

As to any overpayment made please

☐ Credit to Deposit Account No._____.

OR

☒ Send refund check.

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

8. STATEMENT

The delay in payment of the maintenance fee to this patent was unintentional.

9. PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED.

Brad A Armstrong — Signature(s) of Petitioner(s)

Oct 4, 2008 — Date

BRAD A. ARMSTRONG, INVENTOR/PATENTEE — Typed or printed name(s)

Registration Number, if applicable

903 566 3036 — Telephone Number

BRAD A. ARMSTONG — Address

15487 Joseph Rd., Tyler TX 75707 — Address

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."

ENCLOSURES:

☒ Maintenance Fee payment

☒ Surcharge under 37 CFR 1.20(i)(2) (fee for filing the maintenance fee petition)

☐ _____

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

NIKAIDO MARMELSTEIN MURRAY & ORAM
METROPOLITAN SQUARE
655 FIFTEENTH STREET NW
SUITE 330 G STREET LOBBY
WASHINGTON DC 20005-5701

MAILED

MAR 05 2009

OFFICE OF PETITIONS

In re Patent No. 5,536,506 :
Issue Date: July 16, 1996 :
Application No. 08/393,738 : ON PETITION
Filed: February 24, 1995 :
Attorney Docket No. P8064-4005 :

This is a decision on the petition under 37 CFR 1.378(c), filed December 11, 2008, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on July 17, 2008 for failure to pay the third maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

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. 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 the delay in paying the maintenance fee under 37 CFR 1.378(c) was intentional, petitioner must notify the Office.

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

The patent file is being referred to Files Repository.

Karen Creasy
Petitions Examiner
Office of Petitions

cc:

ARENT FOX LLP
1050 CONNECTICUT AVENUE, N.W.
SUITE 400
WASHINGTON, DC 20036-5339

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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Paper No. 12

OLE K. NILSSEN
200 N. HARRISON STREET
SUITE 103
ALGONQUIN, IL 60102

COPY MAILED

AUG 1 1 2006

OFFICE OF PETITIONS

In re Patent No. 6,172,464 :
Issue Date: January 9, 2001 :
Application No. 08/394,251 : NOTICE
Filed: February 24, 1995 :
Attorney Docket No.

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**.

Inquiries related to this communication should be directed to Irvin Dingle at (571) 272-3210.

This file is being forwarded to the Files Repository.

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
www.uspto.gov

PROSKAUER ROSE LLP
ONE INTERNATIONAL PLACE 14TH FL
BOSTON MA 02110

COPY MAILED

APR 27 2006

OFFICE OF PETITIONS

In re Application of
Couch et al. :
Patent No. 5,591,357 : CORRECTED
Application No. 08/394,707 : NOTICE
Filed: February 27, 1995 :
Issue Date: January 7, 1997 :
Title: PLASMA ARC CUTTING :
PROCESS AND APPARATUS USING :
AN OXYGEN-RICH GAS SHIELD

This is a notice regarding your request filed on February 27, 2006, that small entity that small entity status be removed for the above identified patent pursuant to 37 CFR 1.27.

The change in status to a large entity has been entered and made of record.

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

Charlema R. Grant

Charlema R. Grant
Petitions Attorney
Office of Petitions

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)
5705059	1998-01-06	08394834	1995-02-27	022370-001300US

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

	Fee	Code
○	3 ½ year	(1551)
◉	7 ½ year	(1552)
○	11 ½ year	(1553)

Small Entity

	Fee	Code
○	3 ½ year	(2551)
○	7 ½ year	(2552)
○	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

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	/Randolph T. Apple/	Date (YYYY-MM-DD)	2007-11-29
Name	Randolph T. Apple	Registration Number	36429

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 record s.

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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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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In re Patent No. 5705059
Issue Date: January 6,1998
Application No. 08394834
Filed: February 27,1995
Attorney Docket No. A-60794/BIR;

:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)

This is a decision on the electronic petition, filed November 29,2007 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 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 November 29,2007. 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 an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

Telephone inquires related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

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)
5622376	1997-04-22	08395416	1995-02-27	501/1/ADM

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

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	/Richard M. Goldberg/	Date (YYYY-MM-DD)	2006-11-05
Name	Richard M. Goldberg	Registration Number	28215

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.**

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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 record s.

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.

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United States Patent and Trademark Office
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In re Patent No. 5622376
Issue Date: April 22,1997
Application No. 08395416
Filed: February 27,1995
Attorney Docket No. U-WP-5070

:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)

This is a decision on the electronic petition, filed November 5,2006 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 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 November 5,2006 . 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 an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

Telephone inquires related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

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)
5,479,675	1996-01-02	08/396,702	1995-03-01	WWP001US

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

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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

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	/Robert Louis Finkel/	Date (YYYY-MM-DD)	2008-02-26
Name	Robert Louis Finkel	Registration Number	19601

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.**

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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 record s.

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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.

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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

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

In re Patent No. 5479675
Issue Date: January 2,1996
Application No. 08396702
Filed: March 1,1995
Attorney Docket No. WWP004US

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed February 26,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 February 26,2008 . 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 an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

Telephone inquires 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)
6,142,882	2000-11-07	08398752	1995-03-06	

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

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	/Jane J. Du/	Date (YYYY-MM-DD)	2010-05-26
Name	Jane J. Du	Registration Number	65844

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

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

In re Patent No. 6142882
Issue Date: November 7,2000
Application No. 08398752
Filed: March 6,1995
Attorney Docket No. ATCI-1

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed May 26,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 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 May 26,2010 . 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.

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)
5518715	1996-05-21	08398792	1995-03-06	

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

	Fee	Code
◯	3 ½ year	(1551)
◯	7 ½ year	(1552)
◯	11 ½ year	(1553)

Small Entity

	Fee	Code
◯	3 ½ year	(2551)
◯	7 ½ year	(2552)
◉	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

Sole Patentee			
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	/JERRY/	Date (YYYY-MM-DD)	2008-07-02
Name	JERRY ROSENBLATT		

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 record s.

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

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

In re Patent No. 5518715
Issue Date: May 21,1996
Application No. 08398792
Filed: March 6,1995
Attorney Docket No.

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed July 7,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 July 7,2008 . 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 an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

Telephone inquires 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)
5612730	1997-03-18	08400245	1995-03-03	JAS189CIP2

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

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	/Joseph A. Sawyer, Jr./	Date (YYYY-MM-DD)	2009-06-02
Name	Joseph A. Sawyer, Jr.	Registration Number	30801

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.**

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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)).

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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

In re Patent No. 5612730
Issue Date: March 18,1997
Application No. 08400245
Filed: March 3,1995
Attorney Docket No. L294.12-0041

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed June 2,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 June 2,2009 . 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)
5572257	1996-11-05	08400427	1995-03-03	D091080

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

	Fee	Code
○	3 ½ year	(1551)
○	7 ½ year	(1552)
◉	11 ½ year	(1553)

Small Entity

	Fee	Code
○	3 ½ year	(2551)
○	7 ½ year	(2552)
○	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

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	/MICHAEL E. MARION/	Date (YYYY-MM-DD)	2009-05-15
Name	MICHAEL E. MARION	Registration Number	32266

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.**

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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.

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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

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

In re Patent No. 5572257
Issue Date: November 5,1996
Application No. 08400427
Filed: March 3,1995
Attorney Docket No. PHD-91-080A

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed May 15,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 May 15,2009 . 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

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
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Paper No. 30

APPLIED MATERIALS INC.
ATTN: JAMES C. WILSON, PATENT COUNSEL
P.O. BOX 450-A
SANTA CLARA, CA 95052

COPY MAILED

NOV 1 8 2003

OFFICE OF PETITIONS

In re Patent of :
Tang et al. :
Patent No. 5,949,927 :
Issue Date: September 7, 1999 :
Application No. 08/401,229 :
Filing Date: March 9, 1995 :
Attorney Docket No. 005353/D1/CMP :

Decision on Petition

This a decision in response to the paper filed November 10, 2003, which is being treated as a petition under 37 CFR 1.377 to accept and record a timely maintenance fee payment for the above-identified patent.

The petition is **GRANTED.**

Petitioner alleges that payment of the 3.5 year maintenance fee was proffered on February 4, 2003. In support of this contention, petitioner has supplied a copy of the maintenance fee transmittal form which accompanied the payment and a copy of a stamped postcard receipt.

The petition complies with the requirements set forth in 37 CFR 1.8(b). In view thereof the maintenance fee is considered timely filed.

PTO records will be updated, and an appropriate Notice will be published in the Official Gazette, in due course.

No petition fee is due and none has been charged. The 3.5 year maintenance fee of $890 has been charged to petitioner's deposit account.

This file is being forwarded to Files Repository.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.

Charles Steven Brantley
Petitions Attorney
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)
5632975	1997-05-27	08401346	1995-03-09	6358/56215

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

	Fee	Code
○	3 ½ year	(1551)
○	7 ½ year	(1552)
○	11 ½ year	(1553)

Small Entity

	Fee	Code
○	3 ½ year	(2551)
○	7 ½ year	(2552)
◉	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

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	/James P. Krueger/	Date (YYYY-MM-DD)	2010-02-05
Name	James P. Krueger	Registration Number	35234

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

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

In re Patent No. 5632975
Issue Date: May 27,1997
Application No. 08401346
Filed: March 9,1995
Attorney Docket No. 56215/5876

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed February 5,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 February 5,2010 . 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.

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)
5505373	1996-04-09	08401420	1995-03-09	HENG-67326

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

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	/SCOTT R. HANSEN/	Date (YYYY-MM-DD)	2008-04-17
Name	SCOTT R. HANSEN	Registration Number	38486

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.**

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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 record s.

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

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

In re Patent No. 5505373
Issue Date: April 9,1996
Application No. 08401420
Filed: March 9,1995
Attorney Docket No. 107-021

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed April 17,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 April 17,2008 . 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 an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

Telephone inquires related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

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)
6,077,822	2000-06-20	08/402,619	1995-03-13	HLBB-101C3T

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

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	/JEFFLLOYD/	Date (YYYY-MM-DD)	2008-07-18
Name	JEFF LLOYD	Registration Number	35589

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

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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 record s.

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

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

In re Patent No. 6077822
Issue Date: June 20,2000
Application No. 08402619
Filed: March 13,1995
Attorney Docket No. 478.1.003A

:

:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)

:

This is a decision on the electronic petition, filed July 18,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 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 July 18,2008 . 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 an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

Telephone inquires related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

#26

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

NOV 12 2004

In re Patent No. **5,707,697**
Issue Date: January 13, 1998
Appl No.: 08/403,200
Filed: March 13, 1995
For: Correction of Inventorship

DECISION GRANTING PETITION
37 CFR 1.324

This is a decision on the petition filed May 04, 2004 to correct inventorship under 37 CFR 1.324.

The petition is granted.

The patented file is being forwarded to Certificate of Corrections Branch for issuance of a certificate naming only the actual inventor or inventors.

Deborah Jones
Supervisory Patent Examiner
Art Unit 1775
Technology Center 1700

CHRISTIE PARKER & HALE
P O BOX 7068
PASADENA, CA 91109-7068

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

DATE: August 24, 2004
TO: Certificates of Correction Branch
FROM: Deborah Jones
SPE, Art Unit 1775
SUBJECT: REQUEST FOR CERTIFICATE OF CORRECTION

Please issue a Certificate of Correction in U. S. Letters Patent No. **5,707,697** as specified on the attached Certificate.

Deborah Jones, SPE
Art Unit 1775

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE

Patent No. **5,707,697**
Patented: January 13, 1998

On petition requesting issuance of a certificate for correction of inventorship pursuant to 35 U.S.C. 256, it has been found that the above identified patent, through error and without deceptive intent, improperly sets forth the inventorship. Accordingly, it is hereby certified that the correct inventorship of this patent is:

Frank **Rohrbacher, Jr.**, Wilmington, Delaware.

Patrick Leon **Spain**, Lowell, Indiana.

Keith Lawson **Truog**, Crown Point, Indiana.

Deborah Jones
Supervisory Patent Examiner
Art Unit 1775

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)
5645747	1997-07-08	08404014	1995-03-13	A87-057A

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

	Fee	Code
○	3 ½ year	(1551)
○	7 ½ year	(1552)
◉	11 ½ year	(1553)

Small Entity

	Fee	Code
○	3 ½ year	(2551)
○	7 ½ year	(2552)
○	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

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	/Mark D. Elchuk/	Date (YYYY-MM-DD)	2009-12-21
Name	Mark D. Elchuk	Registration Number	33686

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

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

In re Patent No. 5645747
Issue Date: July 8,1997
Application No. 08404014
Filed: March 13,1995
Attorney Docket No. A87-057A

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed December 21,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 December 21,2009 . 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.

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)
5595457	1997-01-21	08404050	1995-03-14	0264M-001

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

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	/gvmanningUPAT/	Date (YYYY-MM-DD)	2009-02-26
Name	GUY V. MANNING	Registration Number	34868

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 record s.

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

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

In re Patent No. 5595457
Issue Date: January 21,1997
Application No. 08404050
Filed: March 14,1995
Attorney Docket No. 0264M-001

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed February 26,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 February 26,2009 . 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

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Paper No. 9

OLE K. NILSSEN
200 N HARRISON STREET
SUITE 103
ALGONQUIN, IL 60102

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DEC 19 2005

OFFICE OF PETITIONS

In re Patent No. 5,736,819	:	
Issue Date: April 7, 1998	:	
Application No. 08/404,090	:	NOTICE
Filed: March 14, 1995	:	
Patentee(s): Ole K. Nilssen	:	

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) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER OF
PATENTS AND TRADEMARKS
Washington, D.C. 20231

Paper No. 17

Robert Raymond
Boehringer Ingelheim Corporation
900 Ridgebury Road
PO Box 368
Ridgefield, CT 06877

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OCT 31 2000

OFFICE OF PETITIONS
A/C PATENTS

In re Patent No. 5,610,163 :
Issue Date: March 11, 1997 :
Application No. 08/405,111 : ON PETITION
Filed: March 16, 1995 :
Attorney Docket No. 1/844-3-C3 :

This is a decision on the petition filed October 18, 2000, under 37 CFR 1.183, to waive the rules and accept correction of the assignee on the fornt page of the above-identified patent.

The petition is granted.

The file is being forwarded to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

Any questions concerning this matter may be directed to Latrice Bond at (703) 308-6911.

Latrice Bond
Paralegal Specialist
Office of Petitions
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

MAR 23 2007

Mary-Ellen M. Devlin
Patent Department
Boehringer Ingelheim Corp.
900 Ridgebury Road
P.O. Box 368
Ridgefield, CT 06877

In re Patent Term Extension Application of	:
U.S. Patent No. 5,610,163	:
Issue Date: March 11, 1997	: Decision on Petition to
U.S. Application No. 08/405,111	: Stay Grant of Certificate in Patent
PTE Filing Date: March 15, 2004	: Term Extension Application
For: Inhibitors of Thrombin	:

The above-identified application has been forwarded to the Office of Patent Legal Administration in the United States Patent and Trademark Office (the "Office") for consideration of a petition titled "Petition to Stay Proceedings re: Patent Term Extension Application for U.S. Patent No. 5,610,163 under 37 C.F.R. §§ 1.182 and/or 1.183," which was filed on February 22, 2007.

The petition is granted for a period of 6 months from the mailing date of this decision.

Background and Analysis

On April 3, 2006, Petitioner informed the Office that a reissue application for U.S. Patent No. 5,610,163 had been filed on October 18, 2005, and had been assigned Reissue Application No. 11/254,213.

On January 23, 2007, the Office issued a Notice of Final Determination on Petitioner's application for patent term extension of U.S. Patent No. 5,610,163 (PTE application) covering Petitioner's NDA-approved drug product Spiriva® Handihaler® (tiotropium bromide monohydrate) indicating that a certificate of extension would be issued to the patent holder, Boehringer Ingelheim Corporation, for a period of 1,421 days.

Petitioner now petitions for a stay of the processing of its PTE application, specifically, a stay of the issuance of the certificate of extension so that prosecution of the reissue application can be concluded and the patent reissued, therefore permitting the certificate of extension to be granted on the reissued patent.

Although Petitioner has petitioned under 37 C.F.R. § 1.183, Petitioner has not recited a specific rule to waive. Since the only rule which could be waived regarding issuance of a certificate of extension is 37 C.F.R. § 1.780 and applicants do not wish to waive that rule, merely stay action on that rule, the petition under 37 C.F.R. § 1.183 is moot. The Office treats the present petition as falling under 37

C.F.R. § 1.182, which addresses all situations not specifically provided for in other regulations. Further, the Office analogizes the request made by Petitioner to requests for staying action in patent applications and for deferring issuance of a patent filed under 37 C.F.R. § 1.103 and 37 C.F.R. § 1.314 respectively. The standard for granting requests under both 37 C.F.R. § 1.103 and 37 C.F.R. § 1.314 is good and sufficient cause. Accordingly, the Office shall apply that same good and sufficient cause standard to the present petition under 37 C.F.R. § 1.182.

Since a stay in the proceedings of the patent term extension application in order to conclude the reissuance of the patent appears to constitute good and sufficient cause, a stay is granted for a time period of 6 months from the mailing date of this decision.

Conclusion

The petition under 37 C.F.R. §§ 1.182 and 1.183 is granted for a period of 6 months from the mailing date of this decision.

The rules and statutory provisions governing the operations of the U.S. Patent and Trademark Office require payment of a fee on filing each petition. *See* 37 C.F.R. § 1.17(f). The required petition fees have been received for the present petition.

Telephone inquiries with regard to this communication should be directed to Mary C. Till at (571) 272-7755.

Mary C. Till
Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

#10

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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DAVID J LEVY, CORPORATE INTELLECTUAL PROPERTY
GLAXOSMITHKLINE
FIVE MOORE DR.
PO BOX 13398
DURHAM NC 27709-3398

APR 11 2002

In re Application of : Decision on
Batchelor, et al. : Petition
Application No. 08/405,120 :
Filed: March 16, 1995 :
Patent No. 5,565,467 :
For: ANDROSTENONE DERIVATIVE

This is in response to the "Petition for Correction of Inventorship of Patent (37 CFR 1.324), filed May 24, 1999. At the request of the Group Director of Technology Center 1600, the petition has been decided by the undersigned.

The petition is granted.

The patented file is being forwarded to Certificate of Corrections Branch for issuance of a certificate naming only the actual inventors (i.e., to delete the names of Robert A. Mook and George F. Dorsey, Jr.).

Telephone inquiries regarding this decision should be directed to the undersigned at (703)306-3159.

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

CERTIFICATE
APR 29 2002
OF CORRECTION

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov

Paper No. 37

Gerow D. Brill
1341 Orleans Drive
Sunnyvale, CA 94089

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JUL 12 2001

**OFFICE OF PETITIONS
A/C PATENTS**

In re Application of :
Ronald Quan, et al. :
Application No. 08/405,482 : ON PETITION
Filed: March 16, 1995 :
Attorney Docket No. M-1469-RE US :

This is a decision on the petition under 37 CFR 1.137(b), filed June 4, 2001, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned as a result of petitioner's failure to take appropriate action in a timely manner after the decision of November 30, 2000 by the Board of Patent Appeals and Interferences. Therefore, the proceedings as to the rejected claims were terminated. See 37 CFR 1.197(c). As no claim was allowed, the-above-identified application became abandoned on January 31, 2001. See MPEP 1214.06.

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.

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. However, in accordance with 37 CFR 1.34(a), the signature of Norman R. Klivans appearing on the petition 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. However, if Mr. Klivans desires to receive future correspondence regarding this application, the appropriate power of

attorney or authorization of agent must be submitted. A courtesy copy of this decision is being mailed to petitioner. Nevertheless, all future correspondence regarding this application file will be directed solely to the address of record until otherwise instructed.

Telephone inquiries concerning this decision should be directed to Retta Williams at (703) 306-5594 or in her absence, Marianne Morgan at (703) 306-3475.

The application file is being forwarded to Technology Center 2700.

Retta Williams

Retta Williams
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Marianne Morgan

Marianne Morgan
Petitions Examiner

cc: Norman R. Klivans
Skjerven Morrill MacPherson LLP
25 Metro Drive, Suite 700
San Jose, CA 95110

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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DIW Mar-08

MORRISON & FOERSTER LLP
755 PAGE MILL RD
PALO ALTO CA 94304-1018

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MAR 26 2008

OFFICE OF PETITIONS

In re Application of	:	
Quan et al.	:	DECISION ON PETITION
Application Number: 08/405482	:	
Filing Date: 03/16/1995	:	
Attorney Docket Number:	:	
136922002630	:	

This is a decision on the petition filed on February 19, 2008, which is being treated as a petition under 37 CFR 1.183 seeking waiver of 37 CFR §§ 1.67 and 1.175 where it requires that a supplemental declaration be executed by a named inventor.[1]

The petition is before the Office of Patent Legal Administration for decision.

The petition is **GRANTED**.

REVIEW OF FACTS

1. On March 16, 1995, the application was filed as an application for reissue of U.S. Patent No. 5,194,965.

2. On March 16, 1995, a declaration in pursuant to with 37 CFR 1.63 and 1.175 was filed, naming Ronald Quan and John F. Peruzzi as joint inventors.

3. On February 19, 2008, a supplemental reissue declaration was filed together with the present petition, whereby petitioners assert that joint inventor Peruzzi cannot be located to sign and return the supplemental declaration.

---

[1] 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 also sign a supplemental oath or declaration is waiver of 37 CFR 1.67. See MPEP 603.

DECISION ON PETITION UNDER 37 CFR 1.183
TO WAIVE §§ 1.67 AND 1.175

In view of the efforts recounted in the petition to locate and obtain the signature of John F. Peruzzi on the supplemental declaration in compliance with 37 CFR 1.175, it is agreed that justice would be served by waiving the requirement for the signature of joint inventor Peruzzi on the supplemental declaration filed on February 19, 2008.

CONCLUSION

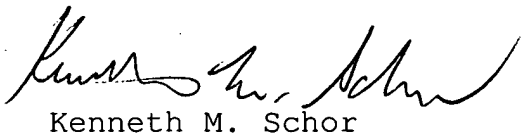
1. The petition is granted.

2. It is noted that petitioners submitted $200.00 with the present petition. Effective December 8, 2004, however, the fee for a petition under 37 CFR 1.183 is $400.00. As such, the balance of $200.00 will be charged to counsel's deposit account, No. 03-1952 as authorized in the petition filed on February 19, 2008.

3. The application is being referred to Technology Center Art Unit 2621 for further processing.

4. Telephone inquiries related to this decision only should be directed to Senior Petitions Attorney Douglas I. Wood at (571) 272-3231.

5. Inquiries regarding petition status or general petition information are handled by the Office of Petitions staff at (571) 272-3282.



Kenneth M. Schor
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

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)
5502715	1996-03-26	08406015	1995-03-16	

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

	Fee	Code
◯	3 ½ year	(1551)
◯	7 ½ year	(1552)
◯	11 ½ year	(1553)

Small Entity

	Fee	Code
◯	3 ½ year	(2551)
◯	7 ½ year	(2552)
◉	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

The Assignee of record of the entire interest			
Under 37 CFR 3.71 an assignee becomes of record by filing a statement in compliance with 37 CFR 3.73(b). Signature requirements are set forth in 37 CFR 1.4(d), and the undersigned certifies that he / she is empowered to act on behalf of the assignee of the entire interest			
Signature	/Chris Zing/	Date (YYYY-MM-DD)	2009-02-20
Name	Chris Zing, CEO and officer of PZ Research, Inc.		
Enter Reel and Frame Number		Remove	
Reel Number	014277	Frame Number	0992
Click ADD for additional Reel Number and Frame Number		Add	

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 record s.

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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.

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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

In re Patent No. 5502715
Issue Date: March 26,1996
Application No. 08406015
Filed: March 16,1995
Attorney Docket No. PE0006/P95-2

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed February 20,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 February 20,2009 . 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)
5,574,722	1996-11-12	08/407,680	1995-03-21	22493-154

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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

The Assignee of record of the entire interest			
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Signature	/Jean-Pierre FORTIN/	Date (YYYY-MM-DD)	2009-11-06
Name	Jean-Pierre FORTIN		
Enter Reel and Frame Number			Remove
Reel Number	007418	Frame Number	0419
Enter Reel and Frame Number			Remove
Reel Number	010461	Frame Number	0283
Enter Reel and Frame Number			Remove
Reel Number	010547	Frame Number	0891
Enter Reel and Frame Number			Remove
Reel Number	011195	Frame Number	0706
Click ADD for additional Reel Number and Frame Number			Add

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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

In re Patent No. 5574722
Issue Date: November 12,1996
Application No. 08407680
Filed: March 21,1995
Attorney Docket No. 82771.P042

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed November 6,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 November 6,2009 . 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

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

4-30-09

Patent No. : 5,793,344
Ser. No. : 08/407,685
Inventor(s) : Jun Koyama
Issued : August 11, 1998

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 1.117(h) (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) **308-9390 ext. 124** or 125

Anthony J. Canning
Nixon Peabody LLP
401 9th St., N.W.
Suite 900
Washington, DC 20004

ej

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)
5,579,636	1996-12-03	08/407,866	1995-03-21	

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SURCHARGE

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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

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	/peterbscull/	Date (YYYY-MM-DD)	2009-02-27
Name	Peter B. Scull	Registration Number	37932

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.**

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UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
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www.uspto.gov

In re Patent No. 5579636
Issue Date: December 3,1996
Application No. 08407866
Filed: March 21,1995
Attorney Docket No. 4987

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed February 27,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 February 27,2009 . 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.

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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)
5,832,384	1998-11-03	08/408,644	1995-03-22	100.376US01

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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

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	/J. Patrick Kendrick/	Date (YYYY-MM-DD)	2007-03-23
Name	Kendrick, J. Patrick	Registration Number	53109

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 record s.

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

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

In re Patent No. 5832384
Issue Date: November 3,1998
Application No. 08408644
Filed: March 22,1995
Attorney Docket No. PD-3592

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed March 23,2007 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 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 March 23,2007 . 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 an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

Telephone inquires related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

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)
5483915	1996-01-16	08409529	1995-03-24	P-3624-1

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

Sole Patentee			
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	/Ronald Clark/	Date (YYYY-MM-DD)	2008-04-07
Name	Ronald Clark		

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.**

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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)).

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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

In re Patent No. 5483915
Issue Date: January 16,1996
Application No. 08409529
Filed: March 24,1995
Attorney Docket No. P-3624-1

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed April 7,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 April 7,2008 . 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 an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

Telephone inquires related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

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)
5,467,705	1995-11-21	08/409,910	1995-03-23	M-77

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

	Fee	Code
◯	3 ½ year	(1551)
◯	7 ½ year	(1552)
◯	11 ½ year	(1553)

Small Entity

	Fee	Code
◯	3 ½ year	(2551)
◯	7 ½ year	(2552)
◉	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

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◯ 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

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	/Victor F. Lohmann, III/	Date (YYYY-MM-DD)	2008-07-22
Name	Victor F. Lohmann, III	Registration Number	33951

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.**

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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

In re Patent No. 5467705
Issue Date: November 21,1995
Application No. 08409910
Filed: March 23,1995
Attorney Docket No. MIN0083-01

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed July 22,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 July 22,2008 . 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 an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

Telephone inquires related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

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

MAR 11 2008

Brad A. Schepers
Krieg Devault LLP
One Indiana Square, Suite 2800
Indianapolis, IN 46204-2709

Re: Patent Term Extension
Application for
U.S. Patent No. 5,782,919

ACKNOWLEDGMENT OF WITHDRAWAL OF APPLICATION FOR PATENT TERM EXTENSION

This is in response to the "Request for Voluntary Withdrawal of Patent Term Extension Applicantion," filed February 21, 2008, of the application for patent term extension for U.S. Patent No. 5,782,919, (InFuse® Bone Graft/LT-CAGE® Lumbar Tapered Fusion Device).

The withdrawal of the application is hereby acknowledged and the application is dismissed.

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

By mail: Mail Stop Hatch-Waxman PTE
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-0100

Telephone inquiries related to this determination should be directed to the undersigned at (571) 272-7755. E-mail inquiries should be directed to mary.till@uspto.gov.

Mary C. Till
Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

cc: Office of Regulatory Policy
Food and Drug Administration
10903 New Hampshire Ave., Bldg. 51, Rm. 6222
Silver Spring, MD 20993-0002

Attention: Beverly Friedman

RE: InFuse® Bone Graft/LT-CAGE® Lumbar Tapered Fusion Device
FDA Docket No.: 2003E-0243

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)
5,710,395	1998-01-20	08/411,229	1995-03-28	

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

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LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

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NOT Small Entity			Small Entity		
	Fee	Code		Fee	Code
○	3 ½ year	(1551)	○	3 ½ year	(2551)
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SURCHARGE

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MAINTENANCE FEE (37 CFR 1.20(e)-(g))

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STATEMENT

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I certify, in accordance with 37 CFR 1.4(d)(4) that I am

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○ 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

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	/Russell O. Paige/	Date (YYYY-MM-DD)	2010-05-28
Name	Russell O. Paige	Registration Number	40758

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.**

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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

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

In re Patent No. 5710395
Issue Date: January 20,1998
Application No. 08411229
Filed: March 28,1995
Attorney Docket No. WLK001

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed May 28,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 May 28,2010 . 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

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

COPY MAILED

JUL 30 2008

OFFICE OF PETITIONS

In re Patent No. 5,612,524 :
Issued: March 18, 1997 :
Application No. 08/412,091 : NOTICE
Filed: March 28, 1995 :
Attorney Docket No. 610.1002CCCC :

This is in response to the communication filed January 9, 2008 regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28.

The instant communication is not signed by a registered attorney or agent of record. However, in accordance with 37 CFR 1.34(a), the signature of Mr. Amedeo F. Ferraro appearing on the petition 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. While a courtesy copy of this communication is being mailed to Mr. Ferraro, the appropriate power of attorney or authorization of agent must be submitted if Mr. Ferraro desires to receive future correspondence regarding this application.

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, any future fees must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3204.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

cc: AMEDEO F. FERRARO
MARTIN & FERRARO, LLP
1557 LAKE O'PINES STREET, NE
HARTVILLE, OH 44632

BOXM · /PAC ·

706 Royal Street New Orleans, La 70116
(504) 522-0300 Fax (504) 522-0304

MEMORANDUM

TO: **DEREK L. WOODS**
OFFICE OF PETITIONS

FROM: **RONEE HOLMES**

SUBJ: **ENCLOSED LETTER OF PATENT REINSTATEMENT**

DATE: **MAY 15, 2007**

I don't know if you remember me but I'm the lady who lost her entire confetti business during Hurricane Katrina.

You very nicely granted me the right to submit my patent maintenance fees late because of the storm.

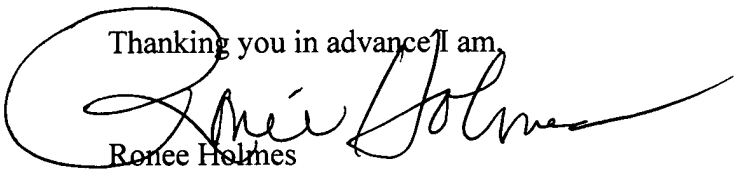
Unfortunately, you sent me a letter (see enclosed) granting me that right but the Patent Number you wrote in your letter have two of the numbers mixed up so the Title of the Invention was also incorrect.

I called you about that mistake and you told me that you would send me a new letter with the correct Patent number and the correct Title of the Invention. Unfortunately, I never received that new letter.

Consequently, I am again asking for a revised letter with the correct Patent Number 5,714, 210 and the correct Title of the Invention (Variable Width Streamers (Diamond Shaped Streamers), so I can have it on file.

I greatly appreciate your response to this request.

Thanking you in advance I am,



Ronee Holmes
The Fetti Lady

enclosure

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

OIPE IAP17
MAY 21 2007
PATENT & TRADEMARK OFFICE

Paper No. 15

ROBERT B. SHERER
103 SOUTH SHAFFER DRIVE
NEW FREEDOM, PA, 17349

COPY MAILED
JUL 19 2006
OFFICE OF PETITIONS

In re Patent of :
Bewersdorf et al. :
Patent No. 5,~~714,201~~ 5,714,210 :
Application No. 08/412,684 :
Filed: March 29, 1995 : ON PETITION
Issued: February 3, 1998 :
Title of Invention: :
~~PROCESS FOR REDUCING DISSOLUTION~~ : Variable Width Streamer
~~TIME IN THE PRODUCTION AND~~/OR : (Diamond Shaped Streamer)
~~COATING OF SODIUM PERCARBONATE~~ :

This is a decision on the petition under 37 CFR § 1.378(b), filed May 26, 2006, to reinstate the above-identified patent. The petition is being treated under 37 CFR 1.378(c)[1].

The petition is **GRANTED**.

The patent issued February 3, 1998. The grace period for paying the three and one-half (7½) year maintenance fee expired on February 3, 2006. Therefore, since this petition was filed within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), this petition was timely filed under the provisions of 37 CFR 1.378(c).

Accordingly, the maintenance fee in this case is hereby accepted and the above-identified patent is hereby reinstated as of the mail date of this decision.

A refund of the surcharge has been scheduled.

The address on the petition is different from the address of record. If Petitioner desires to receive further correspondence with respect to this application, a change of correspondence address must be filed. A courtesy copy of this Decision is being forwarded to Petitioner at the address appearing on the

[1] See 1299 OG 20, October 4, 2005

petition; however, all future correspondence will be sent to address of record until instructions to the contrary are received.

Patentee is advised that, in patented files: requests for changes of correspondence address, powers of attorney, revocations of powers of attorney, withdrawal of attorney and submissions under 37 CFR 1.501. Designation of, or changes to, a fee address should be addressed to Mail Stop M, Correspondence, Director of the U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.

The file is being forwarded to the files repository.

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

Derek L. Woods
Attorney
Office of Petitions

Cc: RONEE HOLMES
706 ROYAL STREET
NEW ORLEANS, LA 70116

I THOUGHT THIS WAS P.T.O. ERROR, too + NOT A CASE OF MINE.

PARTI LINE
INTERNATIONAL
RONEE C. HOLMES
Manager
PHONE: 504-522-0300
TOLL FREE: 877-321-1999
FAX: 504-522-0304
WWW.FLUTTERFETTI.COM
Flutterfetti
Fun Factory

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

JOHN WASHECKA
8915 FAIRWAY HILL
AUSTIN, TX 78750

COPY MAILED

MAR 2 5 2005

OFFICE OF PETITIONS

In re Application of :
Washecka, John :
Patent No. 5,566,499 : ON PETITION
Application No. 08/412,933 :
Filed: March 29, 1995 :
Issued: October 22, 1996
Title: COLLAPSIBLE BAIT TRAP AND DECOY CAGE TO TANTALIZE AND ATTRACT PREDATOR FISH

This is a decision on the petition under 37 CFR 1.378(c), filed December 21, 2004, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The patent issued October 22, 1996. The last day of the grace period for paying the 7.5-year maintenance fee was October 22, 2004. Therefore, since this petition was filed within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), this petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3282.

Liana Chase
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
For Patent Examination Policy

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)
5,596,316	1997-01-21	08/412,970	1995-03-29	026032-3346

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

	Fee	Code
○	3 ½ year	(1551)
○	7 ½ year	(1552)
◉	11 ½ year	(1553)

Small Entity

	Fee	Code
○	3 ½ year	(2551)
○	7 ½ year	(2552)
○	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

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	/Karl F. Reichenberger/	Date (YYYY-MM-DD)	2009-02-27
Name	Karl F. Reichenberger	Registration Number	60726

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 record s.

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

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

In re Patent No. 5596316
Issue Date: January 21,1997
Application No. 08412970
Filed: March 29,1995
Attorney Docket No.

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed February 27,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 February 27,2009 . 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)
5719925	1998-02-17	08413267	1995-03-30	SHAP.6869-NY

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

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	/Arlen L. Olsen/	Date (YYYY-MM-DD)	2010-06-17
Name	Arlen L. Olsen	Registration Number	37543

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

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

In re Patent No. 5719925
Issue Date: February 17,1998
Application No. 08413267
Filed: March 30,1995
Attorney Docket No. PEOPLESCASE2

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed June 17,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 June 17,2010 . 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)
5,614,414	1997-03-25	08/413,477	1995-03-30	

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

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	/Kristen L. Pursley/	Date (YYYY-MM-DD)	2010-04-28
Name	Kristen L. Pursley	Registration Number	61161

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

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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.

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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).

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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)).

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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.

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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

In re Patent No. 5614414
Issue Date: March 25,1997
Application No. 08413477
Filed: March 30,1995
Attorney Docket No. 8881-00041

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed April 28,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 April 28,2010 . 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

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

MCDONNELL BOEHNEN HULBERT & BERGHOFF LLP
300 S. WACKER DRIVE
32ND FLOOR
CHICAGO, IL 60606

Mail Date: 04/22/2010

Applicant	: ADRIANUS P. MOLENAAR	: DECISION ON REQUEST FOR
Patent Number	: 5635497	: RECALCULATION of PATENT
Issue Date	: 06/03/1997	: TERM ADJUSTMENT IN VIEW
Appliction No	: 08/414,040	: OF WYETH
Filed	: 03/30/1995	:
		:

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.

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)
5,568,260	1996-10-22	08/414,168	1995-03-31	RD21432

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

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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

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	/mm52020/	Date (YYYY-MM-DD)	2008-11-05
Name	Mardson McQuay	Registration Number	52020

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.**

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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)).

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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

In re Patent No. 5568260
Issue Date: October 22,1996
Application No. 08414168
Filed: March 31,1995
Attorney Docket No. RD-21.432

:

:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)

:

This is a decision on the electronic petition, filed November 5,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 November 5,2008 . 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

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

In re Patent No. 5610023
Issue Date: March 11,1997
Application No. 08414640
Filed: March 31,1995
Attorney Docket No. 2L06-1-001

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed June 26,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 June 26,2009 . 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)
5610023	1997-03-11	08414640	1995-03-31	21206-1001

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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

	Fee	Code
○	3 ½ year	(1551)
○	7 ½ year	(1552)
◉	11 ½ year	(1553)

Small Entity

	Fee	Code
○	3 ½ year	(2551)
○	7 ½ year	(2552)
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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))

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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

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○ 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

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	/Cynthia J. Lee/	Date (YYYY-MM-DD)	2009-06-26
Name	Cynthia J. Lee	Registration Number	46033

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.**

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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
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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)
5635394	1997-06-03	08414728	1995-03-31	16132-16

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).

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☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

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NOT Small Entity			Small Entity		
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◯	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

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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.

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◯ The assignee of record of the entire interest

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	/Scott Pundsack/	Date (YYYY-MM-DD)	2010-03-09
Name	Scott R. Pundsack	Registration Number	47330

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.**

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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.

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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

In re Patent No. 5635394
Issue Date: June 3,1997
Application No. 08414728
Filed: March 31,1995
Attorney Docket No. 9476.4US01

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed March 9,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 March 9,2010 . 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)
5663972	1997-09-02	08416551	1995-04-03	IL-9582

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

	Fee	Code
○	3 ½ year	(1551)
○	7 ½ year	(1552)
◉	11 ½ year	(1553)

Small Entity

	Fee	Code
○	3 ½ year	(2551)
○	7 ½ year	(2552)
○	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

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	/John H. Lee, #59,193/	Date (YYYY-MM-DD)	2009-09-04
Name	John H. Lee	Registration Number	59193

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.**

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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.

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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

In re Patent No. 5663972
Issue Date: September 2,1997
Application No. 08416551
Filed: April 3,1995
Attorney Docket No. SIL-9582

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed September 4,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 September 4,2009 . 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

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
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Paper No. 34

GLADYS H. MONROY
MORRISON & FOERSTER
755 PAGE MILL ROAD
PALO ALTO, CA 94304-1018

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OFFICE OF PETITIONS

In re Application of
Miltenyi, et al.
Application No. 08/416,920
Filed: April 21, 1995
Attorney Docket No. 212302000320

DECISION ON PETITION

This is a decision on the combined petition filed August 21, 2000, pursuant to 37 C.F.R. §1.137(b), to revive the above-identified application, and pursuant to 37 C.F.R. §1.183, to waive the requirement of §1.137(b)(4) for a terminal disclaimer. The application file was recently forwarded to the Office of Petitions for consideration of the petition[1].

The petition is **GRANTED**.

The above-identified application became abandoned for failure to timely file a proper response to the Nonresponsive Letter mailed September 2, 1998[2]. A supplemental amendment was filed on September 16, 1998, purportedly correcting the deficiencies noted in the Nonresponsive Letter. However, in a final rejection mailed July 20, 1999, the examiner noted that the previously cited deficiency in claim 20 still needed to be corrected. Accordingly, it is concluded that the response filed September 16, 1998 was not fully responsive and the above-identified application became abandoned on October 3, 1998, by operation of law. The present petition precedes the mailing of a courtesy Notice of Abandonment.

The abandoned status of the application was not made of record and prosecution in the application continued. On January 20, 2000, applicant replied to the final rejection with both an amendment under 37 CFR 1.116 and a Notice of Appeal. In an advisory action mailed March 17, 2000, applicant was advised *inter alia* that the amendment would not be entered, the final rejection stood, and that an appellant's brief in accordance with §1.192(a) was due. On August 21, 2000, applicant filed the instant petition along with *inter alia* 1) a request for removing the finality of the July 20, 1999 Office action pursuant to 37 CFR §1.129(a); 2) an amendment under §1.129; and 3) a petition for a five-month extension of time. The petition was not

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[1] On August 23, 2001, petitioner contacted the Office of Petitions regarding the status of the petition, and submitted a copy thereof by facsimile transmission.

[2] Consistent with Office practice at the time, the Nonresponsive letter mailed September 2, 1998, should have set a 30 Day period for reply. This omission is not significant, in that, the examiner did consider the reply to the letter filed September 16, 1998.

forwarded to the Office of Petitions for consideration. But, in an Office action mailed January 16, 2001 (remailed February 14, 2001), the finality of the July 20, 1999 Office action was withdrawn, and applicant's first submission after final filed on October 30, 2000, was entered.

As prosecution has continued, this petition is being considered to close the gap in prosecution. Petitioner has met the requirements for a grantable petition under §1.137(b). The petition as filed included the petition fee and the required statement of unintentional delay. The Notice of Appeal previously filed January 20, 2000, is accepted as the reply required under §1.137(b)(1)[3],[4]. Under the circumstances of the abandonment of this application, petitioner's request for waiver of the requirement for a terminal disclaimer is granted.

This application is being returned to Technology Center 1600 for examination. This decision in no way tolls the period for reply to any outstanding Office action or requirement.

Telephone inquiries related to this decision should be directed to the undersigned at (703) 305-0309.

Nancy Johnson
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

[3] As the amendment under §1.116 filed January 20, 2000, did not place the application in condition for allowance, it does not satisfy §1.137(b)(1).

[4] However, the subsequent timely filing under §1.129 served to withdraw the Notice of Appeal and eliminate the requirement to file an Appeal Brief.

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
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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)
5,605,526	1997-02-25	08/417,091	1995-04-05	006026-000006

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

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	/Timothy N. Thomas/	Date (YYYY-MM-DD)	2010-05-26
Name	Timothy N. Thomas	Registration Number	35714

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.**

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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)).

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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

In re Patent No. 5605526
Issue Date: February 25,1997
Application No. 08417091
Filed: April 5,1995
Attorney Docket No. JCM:TNT:SMB

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed May 26,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 May 26,2010 . 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
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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)
5,702,514	1997-12-30	08/417,682	1995-04-06	173P112

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☐ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

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Small Entity

	Fee	Code
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○	11 ½ year	(2553)

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MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition.

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PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED

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○ 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

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	/Ann M. Knab/	Date (YYYY-MM-DD)	2010-02-09
Name	Ann M. Knab	Registration Number	33331

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

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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

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

In re Patent No. 5702514
Issue Date: December 30,1997
Application No. 08417682
Filed: April 6,1995
Attorney Docket No. 660-1

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed February 9,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 February 9,2010 . 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)
5,566,867	1996-10-22	08/418,166	1995-04-04	

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

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	/Everett G. Diederiks, Jr./	Date (YYYY-MM-DD)	2009-04-28
Name	Everett G. Diederiks, Jr.	Registration Number	33323

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

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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)).

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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.

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UNITED STATES PATENT AND TRADEMARK OFFICE

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In re Patent No. 5566867
Issue Date: October 22,1996
Application No. 08418166
Filed: April 4,1995
Attorney Docket No. 3081.02-1HD

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed April 28,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 April 28,2009 . 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
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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)
5655540	1997-08-12	08418175	1995-04-06	

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

Sole Patentee			
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	/2636946/	Date (YYYY-MM-DD)	2009-11-17
Name	Ronald D. Seegobin		

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.**

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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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www.uspto.gov

In re Patent No. 5655540
Issue Date: August 12,1997
Application No. 08418175
Filed: April 6,1995
Attorney Docket No.

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed November 17,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 November 17,2009 . 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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NOV 04 2003

Director's Office
Group 3700

Erwin Schwartz
305 Baffin, Dollard-Des-Ormeaux
Quebec, H9A3GA4, Canada

In re Application of
Erwin Schwartz et al.
Serial No. **08/418,286**
Filed: April 7, 1995
For: HEAT EXCHANGER

DECISION ON PETITION
TO WITHDRAW HOLDING
OF ABANDONMENT

Receipt is acknowledged of Applicants' Petition to withdraw the holding of abandonment filed March 17, 2003 (and entered as Paper No. 15).

BACKGROUND

On February 27, 1996, a Final Rejection was mailed to Petitioners (Paper no. 7).

On May 5, 1996, Petitioners filed a request for reconsideration after final rejection (Paper no. 8).

On May 10, 1996, Petitioners filed a Revocation of Power of Attorney to remove Mila Shvartsman as their representative and establishing Erwin Schwartz as having the Power of Attorney (Paper no. 9).

On May 30, 1996, a Notice of Acceptance of the Revocation of Power of Attorney was mailed to Petitioners (Paper no. 10).

On June 3, 1996, an Advisory Action was mailed to Petitioners (Paper no. 11).

On July 22, 1996, Petitioners filed a proposed amendment after Final under 37 CFR 1.116.

On September 11, 1996, a notice of informal/non-responsive amendment was mailed to Petitioners indicating that the proposed amendment filed 7/22/96 lacked a petition for an extension of time and the proper petition fee.

On October 1, 1996, a Notice of Abandonment was mailed to Petitioners in view of the fact that no proper response to the Final Rejection had been received.

DISCUSSION

Petitioners have petitioned to withdraw the holding of abandonment which does not require a petition fee.

The facts show that a request for reconsideration after Final Rejection was filed on 5/10/96. In the petition, Petitioners have misstated the Advisory Action as having "EXTENDED the Period for Response by ... THREE MONTH...". In the Advisory Action dated 6/3/96, the examiner actually stated that

> "(t)he period for response continues to run three months from the date of the final rejection" and that the "...request for reconsideration has been considered but does not overcome the rejection...".

The facts further show that a proposed amendment after final rejection was submitted on 7/22/96 without a petition for an extension of time along with the fee since the three month shortened statutory period set in the final rejection had expired on 5/27/96. Thus the proposed amendment was not timely filed. In response to the late amendment, the examiner mailed a notice of informal/non-responsive amendment giving Petitioners one month to correct the informality which as he noted would be an "appropriate extension of time and fee therefore".

The facts show, and there is no dispute, that Petitioners failed to file a response to the examiner's notice of informal/non-responsive amendment mailed 9/11/96. Thus, in view of the above discussion and the fact that the full statutory limit of six months has run from the time of the final rejection, the application is, in fact, abandoned. This situation is not an issue involving a holding of abandonment but rather an abandonment in fact.

Petitioners have several options when a case is abandoned. In order to revive an application that is abandoned, Petitioners must file a petition under 37 CFR 1.137 as set forth below. See also MPEP, Section 711.03(c).

Petitions under 37 CFR 1.137(a) require:

(A) the required reply, unless previously filed;
(B) the petition fee as set forth in 37 CFR 1.17(l);
(C) a showing to the satisfaction of the Commissioner 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
(D) any terminal disclaimer required pursuant to 37 CFR 1.137(d).

Petitions under Rule 137(b) require:

(A) the required reply, unless previously filed;
(B) the petition fee as set forth in Rule 1.17(m);

(C) 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 Rule 1.137(b) was unintentional; and
(D) any terminal disclaimer required pursuant to Rule 1.137(d).

DECISION

The petition is DISMISSED.

Petitioners may file a renewed petition, without fee, addressing the points raised above. 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). No 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 1.181". Alternatively, petitioners may wish to consider filing a petition to revive under 37 CFR 1.137 as set forth above. The rules and MPEP sections cited may be found on the USPTO website at: www.uspto.gov.

Richard A. Bertsch
Group Director
Technology Center 3700
Phone: 703-308-0975
Fax: 703-308-4741

Attachment : copy of MPEP, Section 711.03(c).

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

JJGJR.: 01-04

Paper No: 18

ERWIN SCHWARTZ
305 BAFFIN ST.
DOLLARD-DES-ORMEAUX
QUEBEC
CANADA
H9A3GA4

COPY MAILED
JAN 2 9 2004
OFFICE OF PETITIONS

In re Application of
Schwartz, et al. :
Application No. 08/418,286 : ON PETITION
Filed: 7 April, 1995 :
Attorney Docket No. (None) :

This is a decision on the petition filed on 5 December, 2003, to revive the above-identified application under 37 C.F.R. §1.137(a)

For the reasons set forth below, the petition under 37 C.F.R.§1.137(a) is **DISMISSED**.

NOTES:

(1) Any petition (and fee) for reconsideration of this decision under 37 C.F.R. §1.137(a) (as to unavoidable delay) or an alternative request for relief under 37 C.F.R. §1.137(b) (as to unintentional delay) 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(a)"; and/or "Petition under 37 C.F.R. §1.137(b)";

(2) Thereafter, there will be no further reconsideration of this matter.

(3) Petitioner's submissions suggest a lack of familiarity with practice before the Office. Petitioner may wish to seek the guidance of an individual registered to practice before the Office, which information may be found at www.uspto.gov.

BACKGROUND

The record reflects that:

- Petitioners failed to reply timely and properly to the final Office action mailed on 27 February, 1996, with a reply due (absent a request and fee for extension of time) on or before Monday, 27 May, 1996;
- in late May 1996, the Office accepted Petitioners' Revocation of Power of Attorney from their former agent and Petitioners undertook prosecution *pro se*;
- following Petitioner's reply filed on 5 May, 1996, which reply did not place the application in condition for allowance, the Examiner mailed an Advisory Action on 3 June, 1996;
- the application was deemed abandoned after midnight 27 May, 1996;
- Notice of Abandonment was mailed on 1 October, 1996;
- as the basis of their claim of unavoidable delay over the seven years and nearly seven months between the due date of their reply and the filing of the instant petition , Petitioners allege that they had to go to court to seek copies of their papers from their former agent;
- contemporaneously with the petition, Petitioners submit a terminal disclaimer (and fee) and a document, which, while it may be intended as a reply to the 23 May, 2003, Office action, is not a proper reply in that it is not a Notice of Appeal, a CPA or RCE, and it does not *prima facie* place the application in condition for allowance (see: MPEP §711.03(c)).

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).[1]

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.

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.[2] Delays in responding properly raise the question whether delays are unavoidable.[3] 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).[4]

And the Petitioner must be diligent in attending to the matter.[5] 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]))

Petitioners simply allowed the period of reply to end without filing a proper and timely reply. Thus, Petitioners have failed to make a showing of unavoidable delay.

Accordingly, in view of the record, the petition as considered under 37 C.F.R. §1.137(a) hereby is **dismissed** for failing to satisfy the "showing" and the "reply" requirements of the regulation.

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[1] 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.

[2] 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.

[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] See: In re Application of G, 11 USPQ2d 1378, 1380 (Comm'r Pats. 1989).

[5] See: Diligence in Filing Petitions to Revive and Petitions to Withdraw the Holding of Abandonment, 1124 Off. Gaz. Pat. Office 33 (March 19, 1991). It was and is Petitioner's burden to exercise diligence in seeking either to have the holding of abandonment withdrawn or the application revived. See 1124 Off. Gaz. Pat. Office supra.

[6] Therefore, by example, an unintentional delay in the reply might occur if the reply and transmittal form are to be prepared and/or deposited for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely prepared and/or deposited for shipment.

ALTERNATIVE VENUE

If Petitioners are unable to make a showing of unavoidable delay surpassing that tendered heretofore, Petitioner's only alternative to irretrievable abandonment likely is to file a petition and fee as set forth at NOTE 1, above at page 1, under 37 C.F.R. §1.137(b), and state therein that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition (with fee) pursuant to 37 C.F.R. §1.137(b) was unintentional."

Thus, Petitioners may wish to supplement his petition to plead alternatively under 37 C.F.R. §1.137(b) wherein the "showing " burden is much less onerous.

A copy of the form for this petition is enclosed herewith.

Petitioners are cautioned that failure to submit such a petition 37 C.F.R. §1.137(b) timely may be viewed as intentional delay and an absolute bar to revival.

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

By mail: (Effective 1 May, 2003)[7]
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (703) 872-9306
ATTN.: Office of Petitions

By hand: Crystal Plaza Four, Suite CP4-3C23
2201 South Clark Place
Arlington, VA 22202

[7] To determine the appropriate addresses for other subject-specific correspondence, refer to the USPTO Web site at www.uspto.gov.

Telephone inquiries concerning this decision may be directed to the undersigned at (703) 305-9199.

John J. Gillon, Jr.
Senior Attorney
Office of Petitions

Encl: Form: Petition for revival alleging unintentional delay

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

JJGJR.: 02-04

Paper No: 20

ERWIN SCHWARTZ
305 BAFFIN ST.
DOLLARD-DES-ORMEAUX
QUEBEC
CANADA
H9A3GA4

COPY MAILED
FEB 2 0 2004
OFFICE OF PETITIONS

In re Application of
Schwartz, et al.
Application No. 08/418,286
Filed: 7 April, 1995
Attorney Docket No. (None)

ON PETITION

This is a decision on the request assigned to be treated as a petition under 37 C.F.R. §1.182 and §1.48 filed on 9 February, 2004, seeking to alter the inventive entity.

For the reasons set forth below, the petition under 37 C.F.R.§1.182 and §1.48 is **DISMISSED**.

NOTES:

(1) Any petition (and fee) for reconsideration of this decision under 37 C.F.R. §1.182 and §1.48 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. §1.182 and §1.48";

(2) Thereafter, there will be no further reconsideration of this matter.

(3) Petitioner's submissions suggest a lack of familiarity with practice before the Office. Petitioner may wish to seek the guidance of an individual registered to practice before the Office, which information may be found at www.uspto.gov.

BACKGROUND

The record reflects that:

- Petitioners failed to reply timely and properly to the final Office action mailed on 27 February, 1996, with a reply due (absent a request and fee for extension of time) on or before Monday, 27 May, 1996;
- in late May 1996, the Office accepted Petitioners' Revocation of Power of Attorney from their former agent and Petitioners undertook prosecution *pro se*;
- following Petitioner's reply filed on 5 May, 1996, which reply did not place the application in condition for allowance, the Examiner mailed an Advisory Action on 3 June, 1996;
- the application was deemed abandoned after midnight 27 May, 1996;
- Notice of Abandonment was mailed on 1 October, 1996;
- as the basis of their claim of unavoidable delay over the seven years and nearly seven months between the due date of their reply and the filing of the instant petition , Petitioners allege that they had to go to court to seek copies of their papers from their former agent;
- contemporaneously with the petition, Petitioners submitted a terminal disclaimer (and fee) and a document, which, while it may be intended as a reply to the 23 May, 2003, Office action, is not a proper reply in that it is not a Notice of Appeal, a CPA or RCE, and it does not *prima facie* place the application in condition for allowance (see: MPEP §711.03(c));
- the petition to revive was dismissed on 29 January, 2004, and the application remains abandoned;
- moreover, Petitioner Erwin Schwartz now seeks to alter the inventive entity, and, specifically, he states as his complete request: "Please REMOVE the name of Peter Lipert from this application. Please confirm receiving this request."

However, Petitioner Schwartz provides no statutory, regulatory or factual basis for this request–in particular, he does not provide a statement from Peter Lipert concurring in this request and does not provide a new oath/declaration.

Petitioner is referred to the terms of the regulations at 37 C.F.R. §1.48, which may be found at: http://www.uspto.gov/web/patents/legis.htm

Therefore, the request considered as a petition is **dismissed**.

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

By mail: (Effective 1 May, 2003)[1]
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (703) 872-9306 (IFW Formal Filings)
ATTN.: Office of Petitions

By hand: Customer Service Window
Lobby/Room 1B03
Crystal Plaza Two
2011 South Clark Place
Arlington, VA 22202

Telephone inquiries concerning this decision may be directed to the undersigned at (703) 305-9199.

John J. Gillon, Jr.
Senior Attorney
Office of Petitions

[1] To determine the appropriate addresses for other subject-specific correspondence, refer to the USPTO Web site at www.uspto.gov.

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

JJGJR.: 01-04

Paper No: 18

ERWIN SCHWARTZ
305 BAFFIN ST.
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QUEBEC
CANADA
H9A3GA4

COPY MAILED
JUN 07 2004
OFFICE OF PETITIONS

In re Application of
Schwartz, et al. :
Application No. 08/418,286 : ON PETITION
Filed: 7 April, 1995 :
Attorney Docket No. (None) :

This is a decision on the petition filed on 25 March, 2003, to revive the above-identified application under 37 C.F.R. §1.137(b)

For the reasons set forth below, the petition under 37 C.F.R.§1.137(b) is **DISMISSED**.

NOTE:

(1) Any petition (and fee) for reconsideration of this decision under 37 C.F.R. §1.137(b) (as to unintentional delay) 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)";

(2) Thereafter, there will be no further reconsideration of this matter.

(3) Petitioner's submissions suggest a lack of familiarity with practice before the Office. Petitioner may wish to seek the guidance of an individual registered to practice before the Office, which information may be found at www.uspto.gov.

BACKGROUND

The record reflects that:

- Petitioners failed to reply timely and properly to the final Office action mailed on 27 February, 1996, with a reply due (absent a request and fee for extension of time) on or before Monday, 27 May, 1996;
- in late May 1996, the Office accepted Petitioners' Revocation of Power of Attorney from their former agent and Petitioners undertook prosecution *pro se*;
- following Petitioner's reply filed on 5 May, 1996, which reply did not place the application in condition for allowance, the Examiner mailed an Advisory Action on 3 June, 1996;
- the application was deemed abandoned after midnight 27 May, 1996;
- Notice of Abandonment was mailed on 1 October, 1996;
- the original petitions under 37 C.F.R.§1.181 and §1.137(a) alleged as the basis of their claim of unavoidable delay over the seven years and nearly seven months between the due date of their reply and the filing of the original petition (in March 2003, to withdraw the holding of abandonment) that Petitioners had to go to court to seek copies of their papers from their former agent (copies of their court documents were submitted);
- the petition under 37 C.F.R.§1.181 was dismissed on 4 November, 2003, and the petition under 37 C.F.R.§1.137(a) was dismissed on 20 February, 2004;
- as of this writing, **Petitioners still have not submitted a proper reply to the final Office action** of 27 February, 1996, in that–with the original petition under 37 C.F.R.§1.137(a) Petitioners submitted a terminal disclaimer (and fee) and a document, which, while it may be intended as a reply to the 23 May, 2003, Office action, is not a proper reply in that it is not a Notice of Appeal, a CPA or RCE, and it does not *prima facie* place the application in condition for allowance (see: MPEP §711.03(c)).

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).[1]

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.

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.[2] Delays in responding properly raise the question whether delays are unavoidable.[3] 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).[4]

And the Petitioner must be diligent in attending to the matter.[5] 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]

Petitioners have filed a petition (with fee), submitted a terminal disclaimer (with fee) and made the statement of unintentional delay, however, **Petitioners have failed to file the required reply**, as discussed above.

Because this petition was not as of this writing a grantable petition, the terminal disclaimer filed

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[1] 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.

[2] 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.

[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] See: In re Application of G, 11 USPQ2d 1378, 1380 (Comm'r Pats. 1989).

[5] See: Diligence in Filing Petitions to Revive and Petitions to Withdraw the Holding of Abandonment, 1124 Off. Gaz. Pat. Office 33 (March 19, 1991). It was and is Petitioner's burden to exercise diligence in seeking either to have the holding of abandonment withdrawn or the application revived. See 1124 Off. Gaz. Pat. Office supra.

[6] 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.

25 March, 2003, under 37 C.F.R. §1.137(d) has not as yet been entered and made of record.[7]

Petitioners have failed to satisfy the requirements of 37 C.F.R.§1.137(b).

CONCLUSION

Therefore, the instant petition under 37 C.F.R. §1.137(b) hereby is **dismissed**.

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

By mail: (Effective 1 May, 2003)[8]
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (703) 872-9306 (IFW Formal Filings)
ATTN.: Office of Petitions

By hand: Customer Service Window
Lobby/Room 1B03
Crystal Plaza Two
2011 South Clark Place
Arlington, VA 22202

[7] The regulations at 37 C.F.R. §1.137(d)(1) state that a terminal disclaimer filed pursuant to this rule must dedicate to the public a terminal part of the term of any patent granted thereon equivalent to the lesser of: 1) the period of abandonment of the application; or 2) the period extending beyond twenty years from the date on which the application for the patent was filed in the United States, or, if the application contains a specific reference to an earlier filed application(s) under 35 U.S.C. 120, 121 or 365(c), from the date on which the earliest such application was filed. Effective 20 September, 2000 (65 Fed. Reg. 54674, 8 September, 2000).

[8] To determine the appropriate addresses for other subject-specific correspondence, refer to the USPTO Web site at www.uspto.gov.

Telephone inquiries concerning this decision may be directed to the undersigned at (703) 305-9199.

John J. Gillon, Jr.
Senior Attorney
Office of Petitions

Encl: Notice of Appeal
Section of MPEP 71103 (with forms)

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

JJGJR.: 06-04

Paper No: 24

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CANADA
H9A3GA4

COPY MAILED
JUN 23 2004
OFFICE OF PETITIONS

In re Application of
Schwartz, et al.
Application No. 08/418,286
Filed: 7 April, 1995
Attorney Docket No. (None)

ON PETITION

This is a decision on the petition filed on 16 June, 2004, to revive the above-identified application under 37 C.F.R. §1.137(b)

For the reasons set forth below, the petition under 37 C.F.R.§1.137(b) is **GRANTED**.

NOTE: Petitioner's submissions suggest a lack of familiarity with practice before the Office. Petitioner may wish to seek the guidance of an individual registered to practice before the Office, which information may be found at www.uspto.gov.

BACKGROUND

The record reflects that:

- Petitioners failed to reply timely and properly to the final Office action mailed on 27 February, 1996, with a reply due (absent a request and fee for extension of time) on or before Monday, 27 May, 1996;

- in late May 1996, the Office accepted Petitioners' Revocation of Power of Attorney from their former agent and Petitioners undertook prosecution *pro se*;
- following Petitioner's reply filed on 5 May, 1996, which reply did not place the application in condition for allowance, the Examiner mailed an Advisory Action on 3 June, 1996;
- the application was deemed abandoned after midnight 27 May, 1996;
- Notice of Abandonment was mailed on 1 October, 1996;
- the original petitions under 37 C.F.R.§1.181 and §1.137(a) alleged as the basis of their claim of unavoidable delay over the seven years and nearly seven months between the due date of their reply and the filing of the original petition (in March 2003, to withdraw the holding of abandonment) that Petitioners had to go to court to seek copies of their papers from their former agent (copies of their court documents were submitted);
- the petition under 37 C.F.R.§1.181 was dismissed on 4 November, 2003, and the petition under 37 C.F.R.§1.137(a) was dismissed on 20 February, 2004;
- at the time of the dismissal of the 25 March, 2004, petition under 37 C.F.R.§1.137(b), Petitioners had not submitted a proper reply to the final Office action of 27 February, 1996;[1]
- the instant renewal of the petition includes a Notice of Appeal (with fee).

Petitioner has filed a petition with fee, reply, terminal disclaimer with fee (previously filed), and has made the statement of unintentional delay.

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]

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[1] With the original petition under 37 C.F.R.§1.137(a) Petitioners submitted a terminal disclaimer (and fee) and a document, which, which was not a proper reply to the 27 February, 1996, Office action in that it was not a Notice of Appeal, a CPA or RCE, and it did not *prima facie* place the application in condition for allowance. (See: MPEP §711.03(c).)

[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.

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.

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.[3] Delays in responding properly raise the question whether delays are unavoidable.[4] 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).[5]

And the Petitioner must be diligent in attending to the matter.[6] 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.[7]

Petitioners have filed a petition (with fee) and reply in the form of a Notice of Appeal (and fee), previously submitted a terminal disclaimer (with fee), made the statement of unintentional delay.

The terminal disclaimer filed 25 March, 2003, under 37 C.F.R. §1.137(d) has been entered and made of record.[8]

Petitioners have satisfied the requirements of 37 C.F.R.§1.137(b).

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[3] 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.

[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] See: In re Application of G, 11 USPQ2d 1378, 1380 (Comm'r Pats. 1989).

[6] See: Diligence in Filing Petitions to Revive and Petitions to Withdraw the Holding of Abandonment, 1124 Off. Gaz. Pat. Office 33 (March 19, 1991). It was and is Petitioner's burden to exercise diligence in seeking either to have the holding of abandonment withdrawn or the application revived. See 1124 Off. Gaz. Pat. Office supra.

[7] 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.

[8] The regulations at 37 C.F.R. §1.137(d)(1) state that a terminal disclaimer filed pursuant to this rule must dedicate to the public a terminal part of the term of any patent granted thereon equivalent to the lesser of: 1) the period of abandonment of the application; or 2) the period extending beyond twenty years from the date on which the application for the patent was filed in the United States, or, if the application contains a specific reference to an earlier filed application(s) under 35 U.S.C. 120, 121 or 365(c), from the date on which the earliest such application was filed. Effective 20 September, 2000 (65 Fed. Reg. 54674, 8 September, 2000).

CONCLUSION

Therefore, the instant petition under 37 C.F.R. §1.137(b) hereby is **granted**.

The instant application is forwarded to Technology Center 3400 to await the filing of the Appeal Brief and fee by Petitioners, pursuant to the regulations at 37 C.F.R. §1.192.[9]

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[9] The regulations at 37 C.F.R. §1.192 provide:

§1.192 Appellant 's brief.

(a) Appellant must, within two months from the date of the notice of appeal under §1.191 or within the time allowed for reply to the action from which the appeal was taken, if such time is later, file a brief in triplicate. The brief must be accompanied by the fee set forth in § 1.17((c)and must set forth the authorities and arguments on which appellant will rely to maintain the appeal. Any arguments or authorities not included in the brief will be refused consideration by the Board of Patent Appeals and Interferences, unless good cause is shown.

(b) On failure to file the brief, accompanied by the requisite fee, within the time allowed, the appeal shall stand dismissed.

(c) The brief shall contain the following items under appropriate headings and in the order indicated below unless the brief is filed by an applicant who is not represented by a registered practitioner:

(1) *Real party in interest.* A statement identifying the real party in interest, if the party named in the caption of the brief is not the real party in interest.

(2) *Related appeals and interferences.* A statement identifying by number and filing date all other appeals or interferences known to appellant, the appellant's legal representative, or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) *Status of claims* .A statement of the status of all the claims, pending or cancelled, and identifying the claims appealed.

(4) *Status of amendments* .A statement of the status of any amendment filed subsequent to final rejection.

(5) *Summary of invention.* A concise explanation of the invention defined in the claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters.

(6) *Issues.* A concise statement of the issues presented for review.

(7) *Grouping of claims.* For each ground of rejection which appellant contests and which applies to a group of two or more claims, the Board shall select a single claim from the group and shall decide the appeal as to the ground of rejection on the basis of that claim alone unless a statement is included that the claims of the group do not stand or fall together and, in the argument under paragraph (c)(8)of this section, appellant explains why the claims of the group are believed to be separately patentable. Merely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable.

(8) *Argument.* The contentions of appellant with respect to each of the issues presented for review in paragraph (c)(6)of this section, and the basis therefor, with citations of the authorities, statutes, and parts of the record relied on. Each issue should be treated under a separate heading.

(i) For each rejection under 35 U.S.C. 112,first paragraph, the argument shall specify the errors in the rejection and how the first paragraph of 35 U.S.C.112 is complied with, including, as appropriate, how the specification and drawings, if any,

(A) Describe the subject matter defined by each of the rejected claims,

(B) Enable any person skilled in the art to make and use the subject matter defined by each of the rejected claims, and

(C) Set forth the best mode contemplated by the inventor of carrying out his or her invention.

(ii)For each rejection under 35 U.S.C. 112,second paragraph, the argument shall specify the errors in the rejection and how the claims particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(iii) For each rejection under 35 U.S.C. 102,the argument shall specify the errors in the rejection and why the rejected claims are patentable under 35 U.S.C.102,including any specific limitations in the rejected claims which are not described in the prior art relied upon in the rejection.

(iv) For each rejection under 35 U.S.C. 103,the argument shall specify the errors in the rejection and, if appropriate, the specific limitations in the rejected claims which are not described in the prior art relied on in the rejection, and shall explain how such limitations render the claimed subject matter unobvious over the prior art. If the rejection is based upon a combination of references, the argument shall explain why the references, taken as a whole, do not suggest the claimed subject matter, and shall include, as may be appropriate, an explanation of why features disclosed in one reference may not properly be combined with features disclosed in another reference. A general argument that all the limitations are not described in a single reference does not satisfy the requirements of this

Petitioners have two months from the mail date of this decision to file their Appeal Brief in triplicate and fee. Extensions of time are governed by the regulations at 37 C.F.R. §1.136.[10]

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paragraph.

(v) For any rejection other than those referred to in paragraphs (c)(8)(i)to (iv)of this section,the argument shall specify the errors in the rejection and the specific limitations in the rejected claims, if appropriate, or other reasons, which cause the rejection to be in error.

(9) *Appendix.* An appendix containing a copy of the claims involved in the appeal.

(d) If a brief is filed which does not comply with all the requirements of paragraph (c)of this section, appellant will be notified of the reasons for noncompliance and provided with a period of one month within which to file an amended brief. If appellant does not file an amended brief during the one-month period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, the appeal will stand dismissed.

[36 FR 5850,Mar.30,1971;para.(a),47 FR 41278, Sept.17,1982,effective Oct.1,1982;para.(a),49 FR 556, Jan.4, 1984, effective Apr.1,1984; 53 FR 23734, June 23, 1988,effective Sept.12, 1988; para. (a), (c), and (d) revised, 58 FR 54504,Oct.22,1993,effective Jan.3,1994; paras.(a)-(c)revised,60 FR 14488,Mar 17,1995,effective Apr.21,1995;para.(a)revised,62 FR 53131,Oct.10, 1997,effective Dec.1,1997]

[10] The regulations at 37 C.F.R. §1.136 provide:

§1.136 Extensions of time.

(a)(1)If an applicant is required to reply within a nonstatutory or shortened statutory time period, applicant may extend the time period for reply up to the earlier of the expiration of any maximum period set by statute or five months after the time period set for reply,if a petition for an extension of time and the fee set in §1.17(a)are filed, unless:

(i)Applicant is notified otherwise in an Office action;

(ii)The reply is a reply brief submitted pursuant to § 1..193(b);

(iii)The reply is a request for an oral hearing submitted pursuant to § 1..194(b);

(iv)The reply is to a decision by the Board of Patent Appeals and Interferences pursuant to §1.196,§1.197 or § 1..304;or

(v)The application is involved in an interference declared pursuant to § 1.611.

(2)The date on which the petition and the fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee.The expiration of the time period is determined by the amount of the fee paid.A reply must be filed prior to the expiration of the period of extension to avoid abandonment of the application (§1.135), but in no situation may an applicant reply later than the maximum time period set by statute, or be granted an extension of time under paragraph (b)of this section when the provisions of this paragraph are available. See §1.136(b)for extensions of time relating to proceedings pursuant to §§ 1.193((b),1.194,1.196 or 1.197;§ 1.304 for extensions of time to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action;§ 1.550(c)for extensions of time in *ex parte* reexamination proceedings,§ 1.956 for extensions of time in *inter partes* reexamination proceedings; and § 1.645 for extensions of time in interference proceedings.

(3)A written request may be submitted in an application that is an authorization to treat any con-current or future reply,requiring a petition for an extension of time under this paragraph for its timely submission, as incorporating a petition for extension of time for the appropriate length of time. An authorization to charge all required fees, fees under §1.17,or all required extension of time fees will be treated as a constructive petition for an extension of time in any concurrent or future reply requiring a petition for an extension of time under this paragraph for its timely submission. Submission of the fee set forth in §1.17(a)will also be treated as a constructive petition for an extension of time in any concurrent reply requiring a petition for an extension of time under this paragraph for its timely submission.

(b)When a reply cannot be filed within the time period set for such reply and the provisions of paragraph (a) of this section are not available, the period for reply will be extended only for sufficient cause and for a reasonable time specified. Any request for an extension of time under this paragraph must be filed on or before the day on which such reply is due, but the mere filing of such a request will not affect any extension under this paragraph. In no situation can any extension carry the date on which reply is duebeyond the maximum time period set by statute. See §1.304 for extensions of time to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action;§1.645 for extensions of time in interference proceedings;§ 1..550(c)for extensions of time in *ex parte* reexamination proceedings; and §1.956 for extensions of time in *inter partes* reexamination proceedings.

(c)If an applicant is notified in a "Notice of Allowability " that an application is otherwise in condition for allowance,the following time periods are not extendable if set in the "Notice of Allowability " or in an Office action having a mail date on or after the mail date of the "Notice of Allowability ":

(1)The period for submitting an oath or declaration in compliance with § 1.63;

(2)The period for submitting formal drawings set under § 1.85((c);and

(3)The period for making a deposit set under § 1.809((c).

[47 FR 41277,Sept.17,1982,effective Oct.1,1982; 49 FR 555,Jan.4,1984,effective Apr.1,1984;49 FR 48416,Dec.12,1984,effective Feb.11,1985; 54 FR 29551,July 13,1989,effective Aug.20,1989;para.(a) revised,58 FR 54504,Oct.22,1993,effective Jan.3,1994; revised, 62 FR 53131, Oct. 10, 1997, effective Dec.1, 1997;para.(c)added,65 FR 54604,Sept.8,2000,effective Nov.7,2000;paras.(a)(2)and (b)revised,65 FR 76756, Dec. 7, 2000, effective Feb.5,2001;para.(c)revised,66 FR 21090,Apr.27,2001,effective May 29,2001]

Telephone inquiries concerning this decision may be directed to the undersigned at (703) 305-9199.

John J. Gillon, Jr.
Senior 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

Date: 02/13/08

Patent No. : 7174954 B1
Ser. No. : 08/418,286
Inventor(s) : SCHWARTZ, ERWIN
Issued : 02/13/07
Title : **HEAT EXCHANGER**
Docket No. : **36.417**

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 mater, 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 1.117(h) (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.

A petition under C.F.R. 1.182 is required to correct the alleged errors in spelling or order of inventor's names, since inventor's names are printed solely in accordance with the type-written names, and in the order of the type-written names on the Declaration, and since the error was the result of applicant's failure to comply with the requirement that the complete and correct names in correct order, be indicated on the Declaration or Oath, no correction is in order here under the provisions of Rule 1.323 (required fee currently $100), unless a petition is granted.

In view of the foregoing, your request is hereby denied.

However, a petition under 37 CFR 1.182 (required fee currently $130) should be directed to the attention of the Assistant Commissioner for Patents, using the following mailing address or FAX number.

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

By Fax: (703) 872-9306
Attn.: Office of Petitions

Lamonte M. Newsome

Lamonte M. Newsome
For Mary Diggs, Supervisor
Decisions & Certificates
Of Correction Branch
(703)-305-5358 or (703) 308-9390 #112

ERWIN SCHWARTZ
305 BAFFIN, DOLLARD-DES-ORMEAUX
QUE., H9A3GA4, CANADA

LMN

MAILED

APR 2 1 2000

PAT & TM OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

#16

In re Application of :
LAWRENCE B. LOCKWOOD :
Serial No. 08/418,772 :
Filed: June 5, 1996 : DECISION ON PETITION
For: AUTOMATED MULTIMEDIA DATA :
PROCESSING NETWORK :
:

This is a decision on the petition filed February 23, 2000 requesting that the above identified application be made special because of actual infringement, pursuant to Manual of Patent Examining Procedure (MPEP) Seventh Edition, §708.02 II Infringement.

The petition does not comply with all the requirements set forth in MPEP 708.02. Specifically, the exhibits and references identified in the petition are nowhere to be found. Accordingly, the petition is dismissed without prejudice to consideration of a renewed petition accompanied by the exhibits and references.

The Board of Patent Appeals and Interferences will assign the above identified application to a Merits panel in due course.

PETITION DISMISSED

Bruce H. Stoner, Jr.
Chief Administrative Patent Judge
Board of Patent Appeals and Interference
(703) 308-9797

cc. Henri J. A. Charmasson
1545 Hotel Circle So
Suite 150
San Diego, CA 92108

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

Paper No. 18

In re Application of
LAWRENCE B. LOCKWOOD
Serial No. 08/418,772
Filed: June 5, 1996
For: AUTOMATED MULTIMEDIA DATA PROCESSING NETWORK

DECISION ON PETITION

This is a decision on the petition filed May 9, 2000 requesting that the above identified application be made special because of actual infringement, pursuant to Manual of Patent Examining Procedure (MPEP) Seventh Edition, §708.02 II Infringement.

The petition now complies with all the requirements set forth in MPEP 708.02. Accordingly, the petition is now granted.

As to appellant's request for the refunding of the petition fee, appellant must request the refund in a separate paper.

The Board of Patent Appeals and Interferences will assign the above identified application to a Merits panel for processing.

PETITION GRANTED

Bruce H. Stoner, Jr.
Chief Administrative Patent Judge
Board of Patent Appeals and Interference
(703) 308-9797

MAILED

JUN 21 2000

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

cc. Henri J. A. Charmasson
1545 Hotel Circle So
Suite 150
San Diego, CA 92108

OIPE JC76 NOV 20 2000

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

In re Application of
LAWRENCE B. LOCKWOOD
Serial No. 08/418,772
Filed: June 5, 1996
For: AUTOMATED MULTIMEDIA DATA PROCESSING NETWORK

Paper No. 18

DECISION ON PETITION

This is a decision on the petition filed May 9, 2000 requesting that the above identified application be made special because of actual infringement, pursuant to Manual of Patent Examining Procedure (MPEP) Seventh Edition, §708.02 II Infringement.

The petition now complies with all the requirements set forth in MPEP 708.02. Accordingly, the petition is now granted.

As to appellant's request for the refunding of the petition fee, appellant must request the refund in a separate paper.

The Board of Patent Appeals and Interferences will assign the above identified application to a Merits panel for processing.

PETITION GRANTED

RECEIVED
NOV 21 2000
OFFICE OF PETITIONS

MAILED
JUN 21 2000
PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Bruce H. Stoner, Jr.
Chief Administrative Patent Judge
Board of Patent Appeals and Interference
(703) 308-9797

cc. Henri J. A. Charmasson
1545 Hotel Circle So
Suite 150
San Diego, CA 92108

#38

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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JUL 0 9 2004

TECHNOLOGY CENTER 2100

Henri J A Charmasson
1545 Hotel Circle SO
Suite 150
San Diego, CA 92108

Paper No. 38

In re Application of: Lockwood Application No. 08/418,772 Attorney Docket No. 1085.1-1I Filed: 04/07/1995 For: AUTOMATED MULTIMEDIA DATA PROCESSING NETWORK	)	DECISION ON PETITION FOR SUPERVISORY REVIEW REGARDING ENTRY OF REPLY BRIEF UNDER 37 CFR §1.181

This is in response to the petition filed on September 22, 2003, under 37 CFR 1.181 requesting supervisory review of the examiner's refusal to enter the reply brief filed June 23, 2003.

The petition is **GRANTED**.

RECENT PROSECUTION HISTORY

(1) An office action finally rejecting all claims pending in the above-referenced application was mailed on August 28, 2002. This action repeated the grounds of rejection set forth in the previous non-final rejection mailed on April 23, 2002.

(2) A notice of appeal and appeal brief were filed by appellant on November 29, 2002 and December 2, 2002, respectively. The appeal brief included Appendix II (patent application family history) and Appendix III (Random House Dictionary definition) in support thereof.

(3) An examiner's answer was mailed on April 22, 2003, including the examiner's response to appellant's arguments set forth in the appeal brief as well as arguments addressing the appendix's filed with the appeal brief.

(4) A reply brief, exhibit AA: Advances in Computers – Volume 22 (1983) and exhibit BB: Webster's New International Dictionary (1942) were timely filed by appellant on June 23, 2003, in response to the examiner's answer.

(5) An examiner's communication refusing to enter the reply brief was mailed on September 8, 2003. The examiner cited 37 CFR 1.193(b) in support of her refusal to enter the reply brief.

(6) On September 23, 2003, Petitioner filed the instant petition contending that the proposed reply brief of June 23, 2003 should have been entered and requests withdrawal of the refusal to enter the proposed reply brief.

RELIEF REQUESTED

The instant petition under 37 CFR 1.181 requests the following relief:

(1) that the refusal to enter the reply brief be withdrawn and that the reply brief be entered and considered under 37 CFR 1.193(b)(1) and M.P.E.P. §1208.03(A); or alternatively,

(2) strike, from the examiner's answer to the appeal brief, any objection to the IBM Dictionary of Computing and strike out from the appellant's reply brief, the material from line 11, page 5 through line 22 of page 6.

ANALYSIS

As of December 1, 1997, the appeal process was modified so as to prevent extraneous matters, such as whether entry of a reply brief is appropriate, from delaying a decision on the merits of the appeal. Specifically, 37 CFR 1.193(b)(1) was modified to give appellant the right to file a reply brief, if timely, regardless of whether the examiner's answer raises new points of arguments. This gives appellant the right to make the last submission prior to review by the BPAI. In view of this rule change, the examiner must either acknowledge receipt and entry of the reply brief (M.P.E.P. §1208.02(A)) or withdraw the final rejection and reopen prosecution to respond to the reply brief (M.P.E.P. §1208.02(B)). The acknowledgement of receipt and entry of a reply brief under 37 CFR 1.193(b)(1) is an indication by the examiner that no further response by the examiner is deemed necessary.

As stated in M.P.E.P. §1208.03, affidavits and other evidence must be submitted in papers separate from the reply brief and the entry of new affidavits, declarations, or exhibits submitted after an application is on appeal is governed by 37 CFR 1.195, which states:

> Affidavits, declarations, or exhibits submitted after the case has been appealed will not be admitted without a showing of good and sufficient reasons why they were not earlier presented.

The reply brief filed June 23, 2003 was timely filed in response to the examiner's answer of April 22, 2003. The reply brief also included the exhibits presented, as filed in a separate paper (exhibit AA and exhibit BB), as required. The exhibits presented with the reply brief, as stated by Petitioner, were submitted to provide supplemental information, in response the Examiner's new point or remarks set forth in the examiner's answer. Specifically, the Examiner had raised a new point of argument in the examiner's answer by stating that "the prior art relied upon by appellant was not published prior to the original application filing date" (M.P.E.P. §608.01(p)) and thus had ruled that the IBM Dictionary of Computing (1993) from which a definition had been relied upon by appellant (see Board Decision of September 25, 2000), could not be "considered as prior art to provide proper support" because the date of publication post-dated the instant invention. In response, Petitioner indicated that the submitted reply brief remarks and exhibits (AA and BB), were necessitated by the examiner expanding on and presenting of a new point of argument raised in the examiner's answer. As such, the petition satisfies the requirement

for a showing of good and sufficient reasons why they were not earlier presented. In view of the above, the reply brief and exhibits of June 23, 2003 are properly enterable.

The petition is **GRANTED**. Appellant's reply brief is proper and has been entered. Accordingly, the alternate relief requested by Petitioner i.e. striking material from the examiner's answer and from appellant's reply brief, is moot in view of the decision set forth above.

The application is being forwarded to the Examiner for appropriate action i.e. consideration and acknowledgment of the reply brief and exhibits filed June 23, 2003. The Office regrets any inconvenience caused by the delay in matching this petition.

Any inquiries related to this decision may be directed to Specials Programs Examiner Brian Johnson at (703) 308-0885.

Stewart Levy, Group Director
Technology Center 2100
Computer Architecture, Software, and Information Security

BLJ: 7/7/04

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 a valid OMB control number

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378 (c))

Docket Number (Optional)
367148-991100

Mail to: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
Fax: (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

Patent No. 5,613,371 Application Number 08/418,821

Issue Date March 25, 1997 Filing Date April 7, 1995

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number (or reissue patent number, if a reissue) and (2) the application number of the actual U.S. application (or reissue 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).

Also complete the following information, if applicable

The above – identified patent

☐ Is a reissue of original Patent No. _____ original issue date _____

original application number _____

original filing date _____

☐ resulted from the entry into the U.S. under 35 U.S.C. 371 of international application _____

filed on _____

CERTIFICATE OF MAILING (37 CFR 1.89(a))

I hereby certify that this paper (*along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class main in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, or facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below.

June 15, 2009
Date

/Timothy W. Lohse/
Signature

Timothy W. Lohse
Typed or Printed Name of Person Signing Certificate

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, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

1. SMALL ENTITY

☑ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

2. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

3. MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition, unless it was paid earlier.

NOT Small Entity			Small Entity		
Amount	Fee	(Code)	Amount	Fee	(Code)
☐ $ _____	3 ½ yr fee	(1551)	☐ $ _____	3 ½ yr fee	(2551)
☐ $ _____	7 ½ yr fee	(1552)	☐ $ _____	7 ½ yr fee	(2552)
☐ $ _____	11 ½ yr fee	(1553)	☑ $ 2055	11 ½ yr fee	(2553)

MAINTENANCE FEE BEING SUBMITTED $ 2055

4. SURCHARGE

The surcharge required by 37 CFR 1.20(i)(2) of $ 1640 (Fee Code 1558) must be paid as a condition of accepting unintentionally delayed payment of a maintenance fee.

SURCHARGE FEE BEING SUBMITTED $ 1640

5. MANNER OF PAYMENT

☐ Enclosed is a check for the sum of $ _____

☑ Please charge Deposit Account No. 07-1896 the sum of $ 3695

☐ Payment by credit card. Form PTO-2038 is attached.

6. AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY

☑ The Director is hereby authorized to charge any maintenance fee, surcharge or petition deficiency to Deposit Account No. 07-1896

7. OVERPAYMENT

As to any overpayment made please

OR

☑ Credit to Deposit Account No. 07-1896 .

☐ Send refund check

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

8. STATEMENT

The delay in payment of the maintenance fee to this patent was unintentional.

9. PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED

/Timothy W. Lohse/ — Signature(s) of Petitioner(s)

June 15, 2009 — Date

Timothy W. Lohse — Typed or printed name(s)

35,255 — Registration Number, if applicable

650-833-2055 — Telephone Number

DLA Piper LLP (US), 2000 University Avenue, East Palo Alto, CA 94303 — Address

Address

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."

ENCLOSURES

☑ Maintenance Fee Payment

☑ Surcharge under 37 CFR 1.20(i)(2) (fee for filing the maintenance fee petition)

☐ _____

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Paper No. 14

GIFFORD KRASS GROH
280 N. OLD WOODWARD AVENUE
SUITE 400
BIRMINGHAM, MI 48009

COPY MAILED

SEP 30 2002

OFFICE OF PETITIONS

In re Patent No. 5,625,410	:	
Issue Date: April 29, 1997	:	
Application No. 08/418,823	:	NOTICE
Filed: April 7, 1995	:	
Attorney Docket No. FNI-01502/03	:	

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.**

Inquiries related to this communication should be directed to the Office of Petitions Staff at (703) 305-9285.

This file is being forwarded to Files Repository.

Wan Laymon
Petitions Examiner
Office of Petitions
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

Paper No. 31

TEXAS INSTRUMENTS INCORPORATED
P O BOX 655474, M/S 3999
DALLAS TX 75265

COPY MAILED

FEB 17 2005

OFFICE OF PETITIONS

In re Application of:
Thrift et al.
Application No. 08/419,229
Filed: April 10, 1995
Docket No.: TI-20205

: ON PETITION

The above-identified application has been referred to this office to treat the petition to expunge under 37 CFR 1.59 filed May 4, 2004.

The petition is **dismissed**. This is not a final agency action.

BACKGROUND

A review of the record reveals that the instant application has been subjected to appellate review, reported as In re Thrift, 298 F.3d. 1357, 63 USPQ2d 2002 (Fed. Cir. 2002), in which the Federal Circuit affirmed the decision of the Board of Patent Appeals and Interferences with respect to claims 1-10, but vacated the Board's decision affirming the examiner's rejection under 35 U.S.C. § 103(a) with respect to claims 11-19, and remanded for further proceedings with respect to those claims. The Board, in turn, remanded the application to the examiner on January 17, 200, for appropriate action consistent with the decision of the court. The remand noted (at 3-4), *inter alia,* that the language of claims 11 through 19 was presented in "means-plus-function" format, which entails interpretation as being limited to the corresponding structure described in the specification or equivalents thereof. The remand went on:

> The Examiner must therefore determine the precise scope of the appealed claims consistent with 35 U.S.C. § 112, sixth paragraph, and must consider how the art of record and any newly discovered prior art, may be applicable to the determination of the patentability of properly construed claims 11-19.

The examiner reopened prosecution in the final Office action of September 25, 2003. While the aforementioned Office action contained newly instituted rejections of the claims under 35 U.S.C. § 112, first and second paragraphs, the action did not contain any rejection of the claims under § 103(a). Further, the action did not contain any

determination of the precise scope of the claims consistent with § 112, sixth paragraph. A Notice of Allowance, and a Notice of Allowability were mailed December 30. 2003. The Notice of Allowability referenced and included an Interview Summary memorializing several telephone conversations between counsel for applicants and the Group Director, Technology Center 2600 that occurred in November and December 2003. The Summary recounted that the Group Director agreed with counsel that the above-noted rejections should be withdrawn, and further, that the Group Director indicated that unless the examiner had present knowledge of the existence or a particular reference(s) negating patentability, this application was to be passed to issue.

The issue fee payment was timely filed March 1, 2004.

On March 23, 2004, a second Notice of Allowability was mailed. This correspondence asserted that the record was incomplete *vis-a-vis* the Board's remand directive to determine the scope of the means-plus-function language and to provide an analysis of the thus-construed claims in light of the prior art. The correspondence went on to define the scope of the means plus function elements of the claims in light of the corresponding structure or acts found in the specification.

On May 4, 2004 applicants filed a paper captioned as "Objection to Communication [mailed March 23, 2004],,." and on the same date filed the instant petition to expunge.

OPINION

Petitioners request that part of the Office communication mailed March 23, 2004 be expunged as such is asserted to be improper and lacking compliance with MPEP 1302.14. Specifically, petitioner contends, the examiner was without authority to reopen prosecution and restrict the scope of the claims.

37 CFR 1.59 provides for the applicant's request for expungement of information in a patent application, other than the original papers upon which the filing date was granted. However, under the terms of the rule, petitioner "must ...establish to the satisfaction of the Director that the expungement of the information is appropriate..." See 37 CFR 1.59(b). Under the circumstances of this case, petitioner has not met his burden of proof.

Given the longstanding USPTO policy that the administrative record of any application file should accurately reflect its prosecution history, a revision or expungement of an Office communication would only be justified where that Office communication contained inappropriate statements that were not suitable for retention in the administrative record. Cf. 37 CFR 1.3, which requires that applicants must conduct their business with the USPTO with decorum and courtesy. Inspection of the Notice of Allowability of March 23, 2004, does not reveal that it contains any inappropriate statements that are, *per se*, unsuitable for retention in the administrative record of this application. While petitioners may disagree with the examiner's findings of fact and conclusions set forth in the contested communication, a mere difference of opinion

does not justify the requested revision or expungement of the communication in whole or in part.[1]

37 CFR 1.104(e) specifically sets forth that "[i]f the examiner believes that the record of the prosecution as a whole does not make clear his or her reasons for allowing a claim or claims, the examiner may set forth such reasoning. The reasons shall...be the subject of a separate communication to the applicant..." There is nothing in this regulation that requires the examiner to make his statement of reasons for allowance while prosecution is open, or that requires the examiner to reopen prosecution to make his statement if prosecution has been previously closed. Indeed, inspection of MPEP 1302.14, which speaks to USPTO policy regarding examiner's statements of reasons of allowance, givens as an example of when it is likely that a statement should be added to the record, the specific instance "(d):[a]llowance after remand from the Board of Patent Appeals and Interferences." Thus, where, as here, an application is allowed after remand from the Board, the USPTO considers a statement of reasons of allowance to be a likely occurrence.

Furthermore, while the examiner's belated determination of the scope of the means-plus-function elements is asserted to have improperly "reopened" prosecution, the record simply does not support petitioner's conclusion. The office action of September 25, 2003, clearly reopened prosecution to apply new rejections under 35 U.S.C. § 112, first and second paragraphs, and just as clearly, the Group Director has vacated those rejections as untenable. Thus, prosecution remained closed. The allegedly improper narrowing construction of the means-plus-function elements of the claims of which petitioner complains was not a rejection of those claims . See In re Volk, 207 USPQ 1086, 1088 (CCPA 1980)(examiner's refusal to construe claims as broadly as applicant desired is not a rejection of those claims conferring jurisdiction for appellate review.)

Accordingly, since the construction given in the Notice of Allowability of March 23, 2003, of the means-plus-function elements was not a rejection, there is no basis given by petitioner or apparent from the record to support the contention that prosecution was reopened. Likewise, the mere fact that petitioner disagrees with the examiner's construction of the claims is not seen to be sufficient grounds for expungement of the construction of which petitioner complains. See Volk at 1087(recounting that the Commissioner dismissed Volk's petition to expunge the examiner's narrowing construction.) Since the USPTO considers it likely that an application allowed after a Board remand will contain a statement of reasons for allowance, petitioner has failed to show why the inclusion of such was an abuse of discretion on the examiner's part. The Board made it clear in its remand that the examiner had not construed the claims in

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[1] In Lear, Inc. v. Adkins, 395 U.S. 653, 670, 162 USPQ 1, 8 (1969), Justice Harlan, writing for the Court, observed:

> A patent, in the last analysis, simply represents a legal conclusion reached by the Patent Office. Moreover, the legal conclusion is predicated on factors as to which reasonable men can differ widely.

question on the record. As noted in MPEP 1304.14, it is incumbent upon the examiner in exercising his or her responsibility to the public, to see that the file history is as complete as is reasonably possible. Furthermore, petitioners do not show that the examiner committed clear error in his listing of the specific sections of the specification that the examiner attributed to the various means-plus-function elements in his construction of the claims. Even assuming *arguendo* that the examiner erred in his listing or if the examiner overlooked other relevant specification disclosure, applicants are permitted by the express language of 37 CFR 1.104(e) to file a statement commenting on the reasons for allowance. Lastly, as the court noted in Volk at 1088:

> If an examiner's narrowing construction of the claims suggests a need for broader claim language, an applicant may present broader claims and obtain a ruling on the validity of those broadened claims.

DECISION

For the reasons given above, applicants have not established to the satisfaction of the Director that expungement of the contested material is appropriate within the meaning of 37 CFR 1.59(b). Accordingly, the contested material will not be expunged.

This application is being returned to Technology Center 2600, Office of the Group Director, for consideration of the communication filed May 4, 2004, captioned "Objection to Communication From Examiner Purporting To Correct An Incomplete Record Of The Application-Mailed After the Issue Fee Paid."

Telephone inquiries related to this communication should be directed to the undersigned at (571) 272-3217.

Brian Hearn

Brian Hearn
Petitions Examiner
Office of Petitions
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OFFICE OF PETITIONS

In re Application of:
Thrift et al.
Application No. 08/419,229 : ON PETITION
Filed: April 10, 1995
Docket No.: TI-20205

This is a decision on the renewed petition under 37 C.F.R. § 1.59 to expunge almost all the information contained in the Notice of Allowability issued by the Patent and Trademark Office (hereafter "PTO") on March 23, 2004.

The petition is **denied**.

BACKGROUND

This application was the subject of Federal Circuit review, in which the Court affirmed the decision of the Board of Patent Appeals and Interferences with respect to claims 1-10, and vacated and remanded the Board's decision with respect to claims 11-19. See In re Thrift, 298 F.3d 1357, 63 USPQ2d 2002 (Fed. Cir. 2002).

The Board then remanded this application to the examiner, noting that since applicants' claims 11-19 were drafted in means-plus-function format, they must have corresponding specification structure pursuant to 35 U.S.C. § 112, ¶ 6 and In re Donaldson, 16 F.3d 1189, 1194-95, 29 USPQ2d 1845, 1850 (Fed. Cir. 1994) (en banc). After discussing Donaldson, the Board's remand decision stated:

> The Examiner must therefore *determine* the precise scope of the appealed claims consistent with 35 U.S.C. § 112, sixth paragraph, and must consider how the art of record, as well as any newly discovered prior art, may be applicable to the determination of the patentability of *properly construed* claims 11-19.

Remand Order at 3-4 (emphasis added).

Upon remand from the Board, and *in view of applicants' specification*, the examiner then issued a non-final rejection under 35 U.S.C. § 112, ¶ 1 (lack of enablement) and ¶ 2 (indefiniteness). Specifically, the examiner found applicants' specification lacking with regard to reciting corresponding structure. Therefore, the examiner did not reach (i.e., address) 35 U.S.C. § 112, ¶ 6, per the Board's Order.

In view of (applicant-initiated) telephonic interviews, the Technology Center re-considered applicants' specification and allowed the pending claims on December 30, 2003, without however, expressly addressing applicants' specification and the Board's Order. Applicants paid the issue fee on March 1, 2004.

On March 23, 2004, the PTO issued a Notice of Allowability (hereafter "PTO Notice"), stating near the beginning:

> After a final review of the record of the application prior to issue, it was determined that the record was incomplete vis-a-vis the Board of Patent Appeals and Interferences' directive to determine the scope of the means-plus-function language cited in the remand and to provide an analysis as to the patentability of the thus-construed claims in light of the prior art. See Paper number 24, 'REMAND TO THE EXAMINER,' paragraph bridging pages three and four, citing In re Donaldson Co., 16 F.3d 1189, 1193, 29 USPQ2d 1845, 1848 (Fed. Cir. 1994) (en banc).

The PTO Notice then determined applicants' specification structure corresponding to applicants' chosen means limitations, pursuant to 35 U.S.C. § 112, ¶ 6, In re Donaldson, and the Board's Order. See, e.g., Means for extracting corresponds to specification figure 2, web browser 52.

On May 4, 2004, applicants filed an "Objection to Communication from Examiner . . ." and a Petition to Expunge the PTO Notice. The Objection paper was considered to be applicants' comments under 37 C.F.R. § 1.104(e), infra.

The Petition to Expunge was dismissed on February 17, 2005.

The instant request for reconsideration was filed on April 5, 2005.

STATUTE AND REGULATIONS

35 U.S.C. § 112, ¶ 6 states:

> An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

37 C.F.R. § 1.104(e) states in pertinent part:

> Reasons for allowance. If the examiner believes that the record of the prosecution as a whole does not make clear his or her reasons for allowing a claim or claims, the examiner may set forth such reasoning. The reasons shall be incorporated into an Office action rejecting other claims of the application or patent under reexamination or be the subject of a separate communication to the applicant or patent owner.

> The applicant or patent owner may file a statement commenting on the reasons for allowance within such time as may be specified by the examiner.

37 C.F.R. § 1.59(b) states in pertinent part:

> Any petition to expunge information from an application must . . . establish to the satisfaction of the Director that the expungement of the information is appropriate.

OPINION

I. The PTO Notice, generally reciting from applicants' specification (*already part of the administrative record*), was properly made part of the administrative record

A. Applicants' claims and the prosecution history required issuance of the PTO Notice (versus possible later expungement)

With respect to claims 11-19, the Federal Circuit remanded this case to the Board with specific instructions prohibiting reliance on common knowledge. Consistent with the Federal Circuit's opinion, the Board then remanded the case to the examiner with specific instructions concerning 35 U.S.C. § 112, ¶ 6 (concerning applicants' chosen means limitations) and In re Donaldson, 16 F.3d 1189, 1193, 29 USPQ2d 1845, 1848 (Fed. Cir. 1994) (en banc) (PTO required to construe means-plus-function language by "look[ing] to the specification and interpret[ing] that language in light of the corresponding structure"). Claim 11 is exemplary of this claim set and reads (emphasis added):

> A voice activated Hypermedia system using grammatical metadata, said system comprising:
>
> a. a speech user agent;
> b. a network browsing module;
> c. an information resource located on a computer network wherein said speech user agent facilitates voice activation of said network browsing module to access said information resource;
> d. a means for extracting a grammar from a hypermedia source on said information resource for future reference to said source;
> e. a means for modifying said grammar;
> f. a means for automatically producing an intelligent grammar from said information resource; and
> g. a means for processing said grammar to produce a reference to said hypermedia source.

As to *all the various means-limitations* applicants' have chosen to employ in their claims, the Board specifically ordered the examiner "as part of the review of this application . . . [to] determine the precise scope of the appealed claims consistent with 35 U.S.C. § 112, sixth paragraph . . . ." Remand Order at 3-4. Significantly, the Board discussed Donaldson and how the statute expressly requires that applicant-chosen means limitations "shall be construed to cover the corresponding structure . . . described in the specification and equivalents thereof," 35 U.S.C. § 112, ¶ 6. Since the PTO must act in writing, 37 C.F.R. § 1.2, the examiner ultimately understood the foregoing directive as requiring an express determination of the structures in the specification corresponding to applicants' "means" limitations. The examiner merely followed the Board's Order, in view of the statute and Donaldson, by issuing the PTO Notice, *which simply recited the relevant parts of applicants' specification, already of record in this application.*

In issuing the PTO Notice, the examiner merely complied with the Board's Order, as 37 C.F.R. § 1.104(e) also supports. Specifically, PTO Rule 104(e) states in pertinent part:

> If the examiner believes that the record of the prosecution as a whole does not make clear his or her reasons for allowing a claim or claims, the examiner may set forth such reasoning. The reasons shall be incorporated into an Office action rejecting other claims . . . or be the subject of a separate communication to the applicant.

Since other claims were not being rejected at this point, the examiner properly issued "a separate communication to the applicant." Id. Also, because there was genuine debate between the examiner and applicants on how § 112 applied to this case (September-December 2003), it was reasonable for the examiner to clarify the record in writing thereafter. As a matter of fact, applicants even utilized the next part of the rule by filing a statement commenting on the PTO Notice, i.e., their "Objection" paper. Each page of this submission states that it is a "Reply to Office communication of March 23, 2004 [i.e., the PTO Notice]." Their submission was considered by the examiner, but did not result in a change in the PTO Notice. Accordingly, both the examiner and the applicants relied on PTO Rule 104(e) in this situation.

B. 37 C.F.R. § 1.104(e) authorizes the PTO to clarify the record "at any point" prior to patent issuance, as held by Leeds v. Commissioner of Patents

As long as the PTO has power over a case, Rule 104(e) permits it to clarify the record. See Blacklight v. Rogan, 295 F.3d 1269, 63 USPQ2d 1534 (Fed. Cir. 2002) (even after an applicant pays an issue fee, the PTO has the authority to withdraw the application from issue and enter a rejection on the merits). Surely, clarifying the the record without withdrawal from issue etc., as was done in this case, is something short of withdrawing from issue to enter a rejection, as the Federal Circuit in Blacklight wholly permitted.

As to timing, "[i]f the patent examiner decides that a patent application should be granted, he must ensure that the patent file, the record detailing the prosecution history of the issued patent, is as complete as reasonably possible, and that the reasons why the patent application is allowed are evident from the file record. *See Manual of Patent Examining Procedure § 1302.14.*" Leeds v. Comm'r of Patents and Trademarks, 955 F.2d 757, 759, 21 USPQ2d 1771, 1772 (D.C. Cir. 1992) (emphasis added). As the Leeds Court further held, "[i]f the examiner determines at any point that the record does not make clear his reasons for allowing the patent, he may, pursuant to [the rule], write up and put in the file a separate statement of reasons." Leeds, 955 F.2d at 759, 21 USPQ2d at 1772 (emphasis added). Also, "as the Manual suggests, most [of these] statements are made at the end of the process when the patent is about to issue . . . [whose] function is essentially supplementary, to fill in gaps or holes in the file record." Id., 955 F.2d at 762, 21 USPQ2d at 1774 (emphasis added). Thus, clarifying or completing the record is important and in the public's interest when the record is less than complete, as was once the case here.

Moreover, in Blacklight, the Federal Circuit further held that "[t]he complexity of the examination process" necessitates "according the PTO latitude" to fulfill its "obligation to assure that patents are properly examined." Id. at 1273, 63 USPQ2d at 1537. Certainly, this latitude further buttresses the examiner's authority to clarify the record pursuant to the Board's Order, 35 U.S.C. § 112, ¶ 6 and Donaldson. See 37 C.F.R. § 1.104(e).

As explained in the PTO dismissal decision of February 17, 2005, which is incorporated herein by reference, it is incumbent upon every examiner in exercising his or her responsibility to the

public to see that the file history is as complete as reasonably possible. See MPEP § 1302.14. It is likewise USPTO policy, per the foregoing MPEP section, that when an application is allowed after a remand from the Board, a statement of reasons for allowance be added to the record. MPEP § 1302.14 Example (D). Indeed, that section of the MPEP also sets forth another example of when it is likely that a statement of reasons for allowance should be added to the record, i.e., subsequent to, as here, a decision by the Federal Circuit. MPEP § 1302.14 Example (H). Thus, the examiner was clearly following applicable authorities and the history of this case in issuing the PTO Notice.

Put simply, the Federal Circuit remanded this case for claims 11-19 to be re-considered and the Board, in light of those claims, further remanded the case to the examiner for it to be analyzed pursuant to 35 U.S.C. § 112, ¶ 6. That is exactly what the examiner did in the PTO Notice. Applicants were free to respond to it, as they have done. Applicants are not, however, unilaterally able to preclude this analysis or have it expunged from the file, infra. It is the examiner's rationale, and thus proper, and must be made part of the file.

II. Expungement of information is only appropriate in rare situations and should not be used to delete from the prosecution history a properly-issued paper on the specification

"Any petition to expunge information from an application must . . . establish to the satisfaction of the Director that the expungement of the information is appropriate." 37 C.F.R. § 1.59(b). The MPEP makes clear that the expungement of record information should occur in very limited situations. See MPEP § 724.05. That particular section of the MPEP and referenced-section 724.02, along with MPEP § 714.25, address the following types of information as subject (or susceptible) to possible expungement:

1) trade secret information;
2) proprietary information;
3) protective order material;
4) unintentionally-submitted information;
5) information submitted in a wrong application; and
6) discourteous/lack of decorum information.

The above situations are the only known types of circumstances which have led to PTO-information expungement. Clearly none of them applies here. Applicants have not alleged that the information includes any trade secret, is proprietary in nature or is subject to a protective order. Neither was the information wrongly-submitted. Nor was it discourteous or lacking in decorum.

Rather, the PTO Notice merely recites the parts of applicants' specification which correspond by law (35 U.S.C. § 112, ¶ 6) to applicants' chosen means limitations. The specification does not contain any of the above type of information and is expected to publicly issue with current claims 11-19 in a patent in the future. Thus, specification information is merely repeated in the PTO Notice, per the statute etc. See Above section I. Accordingly, no recognized basis for expunging information applies to this case and the PTO sees no reason to exercise its discretion to deviate from, or expand upon, the above-established bases for expungement. See, e.g., Saxbe v. Bustos, 419 U.S. 65, 74 (1974) (acknowledging an agency's right to maintain a "longstanding administrative construction"). Moreover, where, as set forth above, the PTO Notice was properly issued, its elimination from the prosecution history would be inappropriate. Finally, expungement typically concerns a line or a relatively-small section of a paper, see, e.g., above types 1-3, as opposed to applicants' request herein of essentially the

elimination of a whole paper (and corresponding ones) from a soon-to-be patented file, which the public has a right to see under 37 C.F.R. § 1.11(a).

While applicants may disagree with the contents of the contested communication, the PTO has long held that a mere difference in opinion does not warrant expungement of the corresponding information contained in an application paper. See, e.g., Ex Parte Fox, 1910 Dec. Comm'r Pat. 123 (Comm'r Pat. 1910).

III. Applicants have made limited arguments to the PTO, each of which has been considered but is not persuasive

Applicants have made the following specific arguments to the PTO:

1) the examiner did not have authority to issue the PTO Notice (Petition at 3-4, 5-7);
2) prosecution being closed barred issuance of the PTO Notice (Petition at 4-5); and
3) the examiner violated MPEP § 1302.14 (Petition at 7-8).

However, contrary to applicants' first argument, above section I shows that the examiner had full and express authority to issue the PTO Notice. In sum, the examiner followed the Board's Remand Order, 35 U.S.C. § 112, ¶ 6, and In re Donaldson (en banc) in addressing applicants' specification language to clarify the record.

As to applicants' second argument, it is well-settled that the PTO "retain[s] jurisdiction in the prosecution of applications and correcting what it considers to be mistakes in its decisions, until the time for judicial review has expired or a patent has issued." In re Borkowski, 505 F.2d 713, 718, 184 USPQ 29, 32-33 (CCPA 1974) (emphasis added). See also Blacklight, 295 F.3d at 1273, 63 USPQ2d at 1537; In re Bass, 314 F.3d 575, 577, 65 USPQ2d 1156, 1157 (Fed. Cir. 2002) (until a reexam certificate issues, "the PTO may reconsider an earlier action") (citing Borkowski); Harley v. Lehman, 981 F.Supp. 9, 11, 44 USPQ2d 1699, 1701 (D.D.C. 1997). As thoroughly discussed above, the Leeds Court expressly held:

> If the examiner determines at any point that the record does not make clear his reasons for allowing the patent, he may, pursuant to [the rule], write up and put in the file a separate statement of reasons. . . . as the Manual suggests, most [of these] statements are made at the end of the process when the patent is about to issue . . . [whose] function is essentially supplementary, to fill in gaps or holes in the file record.

955 F.2d at 759, 762, 21 USPQ2d at 1772, 1774 (emphases added). Thus, *the time* at which the examiner exercised his authority, established in above section I, was of no consequence in view of the foregoing authorities.

As to their third and final argument, applicants expressly rely on the following passage found in MPEP § 1302.14:

> Where specific reasons are recorded by the examiner, care must be taken to ensure that statements of reasons for allowance (or indication of allowable subject matter) are **accurate, precise, and do not place unwarranted interpretations, whether broad or narrow, upon the claims**.

(Emphasis added by applicants). After quoting the above passage, applicants state, in a conclusory manner, the PTO Notice statements are "not accurate, not precise and they place unwarranted interpretations upon the claims." Petition at 7-8. However, applicants have not shown the PTO Notice to lack accuracy/precision. Rather, the notice followed the Board's Remand Order and applicants' specification, in view of applicants' chosen means limitations. As to any warranted interpretations upon the claims, 35 U.S.C. § 112, ¶ 6 and Donaldson, 16 F.3d 1189, 29 USPQ2d 1845, actually place an interpretation upon a claim *when an applicant chooses to employ means claims*. The examiner merely applied these binding authorities to clarify the record. Moreover, it is well-settled that as to patent-enforcement, "the statement of an examiner [on allowance] will not necessarily limit a claim." ACCO Brands v. Micro Sec. Devices, 346 F.3d 1075, 1079, 68 USPQ2d 1526, 1529 (Fed. Cir. 2003). Thus, this particular argument made by applicants is not persuasive.

As set forth above, the arguments applicants made to the PTO have been fully considered and are expressly addressed in this decision.

DECISION

For the reasons given above and in the decision mailed February 17, 2005, applicants have not established to the satisfaction of the Director that expungement of the contested material is appropriate within the meaning of 37 C.F.R. § 1.59(b). Accordingly, the petition is **denied**.

This decision may be considered final agency action. See MPEP § 1002.02.

Charles Pearson
Director, Office of Petitions

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OFFICE OF PETITIONS

In re Application of:
Thrift et al.
Application No. 08/419,229
Filed: April 10, 1995
Docket No.: TI-20205

LETTER

This application is again before this office due to the paper filed October 14, 2005, self-styled as a "request for reconsideration" of the final agency action mailed October 6, 2005.

Applicants filed a petition to expunge May 4, 2004, which was answered by the USPTO. See Agency action issued on February 17, 2005.

Applicants then filed on a "REQUEST FOR RECONSIDERATION OF DECISION ON PETITION BY COMMISSIONER," which was also answered by the USPTO in the final agency denial. See Final agency action issued on October 6, 2005. It is noted that the USPTO Director has delegated his authority to decide expunge petitions to the Office of the Deputy Commissioner for Patent Examination Policy. 35 U.S.C. § 3(b)(3)(B); 37 C.F.R. § 1.181(g); MPEP § 1002.02(b)(34).

Applicants then filed the instant "REQUEST FOR RECONSIDERATION BY THE COMMISSIONER OF DECISION DENYING PETITION TO EXPUNGE - 37 C.F.R. § 1.59(b)," their third petition submission, notwithstanding the final agency action of October 6, 2005.

However, as the USPTO has already denied applicants' petition/reconsideration request in the "final" agency action, citing MPEP § 1002.02 ("a denial of a petition may be viewed as a final agency decision"),* applicants' second reconsideration request will only be placed in the file.

Charles Pearson
Director, Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

* A "definitive ruling" may form the basis for final agency action. FTC v. Standard Oil, 449 U.S. 232, 243 (1980).

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In Re: Patent Term Extension
Applications for
U.S. Patent No. 5,260,273 and
U.S. Patent No. 5,789,381

DECISION DENYING APPLICATIONS FOR PATENT TERM EXTENSION FOR U.S. PATENT NOS. 5,260,273 AND 5,789,381

This is in response to the applications for interim patent term extension of the term of U.S. Patent No. 5,260,273 (the '273 patent) and U.S. Patent No. 5,789,381 (the '381 patent) under 35 U.S.C. § 156, filed in the United States Patent and Trademark Office (USPTO) on October 6, 2009. The application was filed by Discovery Laboratories Inc. on behalf of the patent owner, Scripps Research Institute (Applicant). Extension is sought based upon the continuing premarket review under § 505 of the Federal Food, Drug, and Cosmetic Act (FFDCA) of the human drug product known as SURFAXIN® (lucinactant) by the Food and Drug Administration (FDA). Because the patent term extension statute only contemplates granting a certificate of extension of a single patent for a single regulatory review period, the present applications for interim patent term extension for the '273 patent and the '381 patent must be **DENIED** in favor of the grant of interim extension in the provisionally elected patent for which interim extension is granted, U.S. Patent No. 5,407,914.

DECISION

Applicant points out in their applications for patent term extension that the provision in § 156(c)(4) clearly prohibits extension of more than one patent for a single regulatory review period under § 156(e)(1), but that there is no explicit prohibition against multiple interim patent term extensions under § 156(d)(5). Although this statement is per se true, the statement fails to consider the statutory language as a whole, the USPTO's long-standing practice and public interest.

I. Statutory Construction Requires Looking at the Statute as a Whole

"The starting point in every case involving construction of a statute is the language itself." *Santa Fe Indus., Inc. v. Green, 430 U.S. 462, 472 (1977).* When construing language in a statute, the terms must be construed "in accordance with [their] ordinary or natural meaning." *Microsoft Corp. v. AT&T Corp., 550 U.S. 437, 449 (2007).* Applicant would have the USPTO focus solely on the provision of § 156(c)(4) which explicitly states, "in no event shall more than one patent be extended under subsection (e)(1) for the same regulatory review period." That focus fails to give meaning to all the statutory provisions. The Court has spoken on this issue and stated, "[w]e must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law." *Gade v. Nat'l Solid Wastes Mqmt. Ass'n, 505 U.S. 88, 99 (1992); see also*

Splane v. West, 216 F.3d 1058, 1068 (Fed. Cir. 2000) ("We must construe a statute ... to give effect and meaning to all its terms."). Moreover, the Federal Circuit has concluded "[i]f the statutory language is clear and unambiguous, the inquiry ends with the plain meaning." *Myore v. Nicholson, 489 F.3d 1207, 1211 (Fed. Cir. 2007).*

The explicit language of section 156, in many instances, states that it is the term of "a patent" which shall be extended. Additionally, the statute provides for "an extension of the term of a patent." See § 156(d)(1). This is not the first time that the USPTO has been required to interpret the language "a patent." It is a long-standing interpretation of the USPTO that "a patent" means one patent. In the context of double patenting, the USPTO's Manual of Patent Examining Procedure (MPEP) clearly explains a "'same invention' type double patenting rejection [is] based on 35 U.S.C. 101 which states in the singular that an inventor 'may obtain **a** patent.'" See MPEP 804 (emphasis added).

The tenants of statutory construction require consideration of the statutory scheme as a whole, giving terms their plain and ordinary meaning. The dictionary definition of "a," as an indefinite article, is "used before nouns and noun phrases that denote a single but unspecified person or thing."[1] Similarly, the use of "an," as an indefinite article, is defined as the "form of 'a' used before words with a vowel or with an unpronounced h."[2] The following table summarizes some sections of the statutory language of section 156 which limit extension to "a" patent.

Section	**Language**
156(a)	[t]he term of **a** patent which claims a product. . . .shall be extended. . . .
156(b)(1)	in the case of **a** patent which claims a product, be limited to . . . .
156(b)(2)	in the case of **a** patent which claims a method of using a product, be limited to . . . .
156(b)(3)	in the case of **a** patent which claims a method of manufacturing a product, be limited to . . . .
156(d)(1)	To obtain **an** extension of the term of a patent under this section. . . .
156(d)(5)(C)	The owner of record of **a** patent, or its agent, for which **an** interim extension has been granted under subparagraph(b), ...

[1] See definition for "a" as an indefinite article at: http://www.thefreedictionary.com/a
[2] See definition for "an" as an indefinite article at: http://www.thefreedictionary.com/an

Based on the language of the statute, as a whole, and the plain meaning of "a patent," the statute only contemplated that a single patent is entitled to have the term extended for the same (single) regulatory review period. Similarly, the explicit language of section 156(d)(5)(C) makes clear that interim extension is applicable only for "a patent," stating, "[t]he owner of record of a patent, or its agent, for which an interim extension has been granted under subparagraph (b), may apply for not more than 4 subsequent interim extensions under this paragraph. . . ." The plain language of obtaining "an extension" for "a patent" delineates that the patent term extension statute contemplates that only one patent may be granted an interim extension. Furthermore, the language of § 156 distinguishes "interim extension" from "extension" by referring throughout subsection 156(d)(5) that the extension is "an interim extension." See e.g., § 156(d)(5)(F) indicating that the rights derived are "during the period of **interim extension**." (emphasis added).

II. Long-Standing Practice

In the approximately 25 years since the enactment of the Hatch-Waxman Act where the USPTO has been administering 35 U.S.C. § 156, the USPTO has not granted multiple interim patent term extensions under 35 U.S.C. § 156(d)(5) for a same (single) regulatory review period. Thus, it would be contrary to long-standing USPTO practice to do so now.

III. Grant Of Multiple § 156(d)(5) Extensions Would Ultimately Amount To Improvident Grant Of Term Extensions In Patents Which Were Not Entitled To Receive Extension

Because the statute does not prohibit a patent owner from seeking extension on more than one patent, an applicant may apply for extension of multiple patents. See 37 C.F.R. § 1.785. In that case, the USPTO and the regulating agency concurrently process the multiple applications for patent term extension and require election of a single patent to receive the certificate of extension under 35 U.S.C. § 156(e)(1). When there is no imminent expiration of a patent for which a certificate of extension is being sought, no interim extension is granted. Thus, at the conclusion of processing of multiple applications for patent term extension based on a same (single) regulatory review period, the elected patent would receive a certificate of extension and the non-elected patents would expire on their original expiration dates. However, unlike here, where the original expiration of the patent(s) are imminent, the USPTO has no authority to grant multiple interim extension under § 156(d)(5) to patent(s) which will not ultimately receive a certificate of extension. Any interim patent term extensions granted to patents which are ultimately not elected is tantamount to granting additional patent rights where the statute does not authorize the USPTO to so grant.

IV. Granting Interim Extension To A Single Patent When Only One Can Ultimately Be Extended Ensures The Public Of The Patent Rights Associated With The Product

Upon approval of the subject product, SURFAXIN®, the FDA would publish in the Approved Drug Products with Therapeutic Equivalence Evaluations (the Orange Book) the patent numbers of patents, which claim the product, SURFAXIN®, or a

method of using the product, SURFAXIN®, along with their respective expiration dates. Any member of the public desiring to determine when the patent protection ends for SURFAXIN® would see patents listed with expiration dates relating to the grant of multiple interim extensions. That situation would lead to confusion, since ultimately only one certificate of extension will be granted. Providing certainty for the public is ensured by granting an interim patent term extension only where warranted, here, that means that only the provisionally elected '914 obtains interim patent term extension.

V. Granting multiple interim extensions would permit additional patents to be listed in the FDA's Orange Book

When a New Drug Application (NDA) is filed with FDA, the marketing applicant must submit to FDA patent information. Specifically, the NDA contains information relating to patents which are alleged to claim the drug product or a method of using the drug product. Upon approval of the drug product, such patents would be automatically listed by FDA, provided that the patents have not expired. The ability of the patent owner (the marketing applicant before the FDA) to list additional patents in the FDA's Orange Book would require additional patent certifications for any filers of applications for drug approval under § 505(j) and § 505(b)(2) of the FFDCA. In granting multiple interim extensions, as sought in this case, means the additional patents would be listed in the Orange Book, necessitating additional patent certifications, and potentially leading to additional litigation. Such unnecessary litigation over patent(s) which would, ultimately, not receive a certificate of extension would nonetheless be required to resolve any patent certifications submitted by an abbreviated new drug application filer indicating non-infringement or invalidity of any listed patent. In granting a single interim extension under 35 U.S.C. § 156(d)(5) any abbreviated new drug application filer would be required to provide patent certifications for only the patent which would ultimately be eligible for a certificate of extension.

CONCLUSION

Applicant's PTE applications for U.S. Patent Nos. 5,260,273 and 5,789,381 are **DENIED**.

This is considered final agency action.

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

By mail: Mail Stop Hatch-Waxman PTE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450.

Telephone inquiries related to this determination should be directed to Mary C. Till at (571) 272-7755.

Brian E. Hanlon
Director
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

cc: Office of Regulatory Policy
Food and Drug Administration
10903 New Hampshire Ave., Bldg. 51, Rm 6222
Silver Spring, MD 20993-0002

RE: SURFAXIN®
Docket No.:

Attention: Beverly Friedman

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)
5,616,342	1997-04-01	08/419,911	1995-04-11	

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

The Assignee of record of the entire interest			
Under 37 CFR 3.71 an assignee becomes of record by filing a statement in compliance with 37 CFR 3.73(b). Signature requirements are set forth in 37 CFR 1.4(d), and the undersigned certifies that he / she is empowered to act on behalf of the assignee of the entire interest			
Signature	/Michael Khoury/	Date (YYYY-MM-DD)	2009-10-27
Name	Michael Khoury		
Enter Reel and Frame Number		Remove	
Reel Number	007443	Frame Number	0391
Click ADD for additional Reel Number and Frame Number		Add	

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

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

In re Patent No. 5616342
Issue Date: April 1,1997
Application No. 08419911
Filed: April 11,1995
Attorney Docket No. PC30432

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed November 7,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 November 7,2009 . 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

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

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JUN 21 2007

OFFICE OF PETITIONS

NEIFELD IP LAW, PC
4813-B EISENHOWER AVENUE
ALEXANDRIA VA 22304

In re Application of :
Quinn, et. al : DECISION ON PETITION
Application No. 08/420,503 :
Filed: April 12, 1995 :
Docket No.: EDWA0019U-USX :

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed May 10, 2007.

The petition is hereby **GRANTED**.

This application became abandoned March 23, 2007 for failure to timely submit a proper reply to the Notice of Allowability ("Notice") mailed December 22, 2006. Notice of Abandonment was mailed April 16, 2007.

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 reviewed and found in compliance with the provisions of 37 C.F.R. § 1.137(b). Accordingly, the failure to timely submit a proper reply to the Notice is accepted as having been unintentionally delayed.

This application will be forwarded to the Office of Patent Publication for further processing.

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

Alesia M. Brown
Petitions Attorney
Office of Petitions

UNITED STATES
PATENT AND
TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. Box 1450
Alexandria, VA. 22313-1450
WWW.USPTO.GOV

Paper No. 16

Amy E. Rinaldo
30500 Northwestern Hwy Suite 410
Farmington Hills, MI. 48334

Date: September 4, 2007
Application No. 08/420,577
Filed: April 12, 1995
Patent Number: 5,608,090
Subject: GABA AND L-GLUTAMIC ACID ANALOGS
FOR ANTISEIZURE TREATMENT

ON PETITION
37 CFR 1.324

Receipt is acknowledged of the petition dated January 7, 2002, requesting a correction of inventorship after issuance of a patent. The petition has been entered, and will be considered under 37 CFR 1.324. The Petition has been considered and is **GRANTED**.

In view of the papers filed, it has been found that this non-provisional application, as filed, through error and without deceptive intent, improperly set forth the Inventorship, and accordingly, this application has been changed by the deletion of **LLOYD C. FRANKLIN, and DENIS M. SOBIERAY .** The application will be forwarded to the Office of Initial Patent Examination (OIPE) for issuance of a corrected filing receipt, and correction of the file jacket and PTO PALM data to reflect the inventorship as corrected.

THURMAN K. PAGE
United States Patent and Trademark Office
Technology Center 1600
REMSEN 5D11
571-272-0602

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.
08/420,577	04/12/1995	RICHARD B. SILVERMAN	P-327(NU)	5282

48924 7590 09/24/2007

KOHN & ASSOCIATES, PLLC
30500 NORTHWESTERN HWY
STE 410
FARMINGTON HILLS, MI 48334

EXAMINER	
SHIPPEN, MICHAEL L	
ART UNIT	**PAPER NUMBER**
1621	

MAIL DATE	DELIVERY MODE
09/24/2007	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
P.O. Box 1450
Alexandria, VA. 22313-1450
WWW.USPTO.GOV

Paper No. 16

Amy E. Rinaldo
30500 Northwestern Hwy Suite 410
Farmington Hills, MI. 48334

Date: September 4, 2007
Application No. 08/420,577
Filed: April 12, 1995
Patent Number: 5,608,090
Subject: GABA AND L-GLUTAMIC ACID ANALOGS FOR ANTISEIZURE TREATMENT

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In view of the papers filed, it has been found that this non-provisional application, as filed, through error and without deceptive intent, improperly set forth the Inventorship, and accordingly, this application has been changed by the deletion of **LLOYD C. FRANKLIN, and DENIS M. SOBIERAY .** The application will be forwarded to the Office of Initial Patent Examination (OIPE) for issuance of a corrected filing receipt, and correction of the file jacket and PTO PALM data to reflect the inventorship as corrected.

THURMAN K. PAGE
United States Patent and Trademark Office
Technology Center 1600
REMSEN 5D11
571-272-0602

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

ROSENBERG, KLEIN & LEE
3458 ELLICOTT CENTER DRIVE-SUITE 101
ELLICOTT CITY, MD 21043

COPY MAILED

SEP 2 0 2005

OFFICE OF PETITIONS

In re Application of
Daniele et al. :
Application No. 08/420,714 :
Filed: April 11, 1995 : NOTICE
Patent No.: 5,576,734 :
Issued: November 19, 1996 :
Title of Invention: :
KEYBOARD EMULATOR SYSTEM :

This is a notice regarding your request to change your entity status to large.

Office records reveal that Green Wireless LLC, is the assignee of the above-identified application.

In accordance with 37 CFR 1.27(g), said notice is hereby accepted. Office records have been corrected to indicate loss of small entity status in the above-identified application.

A review of the petition reveals that the address appearing on the petition differs from the correspondence address of record. Applicant is advised that, in patented files: requests for changes of correspondence address, powers of attorney, revocations of powers of attorney, withdrawal of attorney and submissions under 37 CFR 1.501: Designation of, or changes to, a fee address, should be addressed to Mail Stop M Correspondence.

The file is being referred to the files repository.

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

Derek L. Woods
Petitions Attorney
Office of Petitions

Cc: TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, 8th Floor
San Francisco, CA 94111-3834

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)
5,894,012	1999-04-13	08/420,848	1995-04-10	000061.99

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

	Fee	Code
○	3 ½ year	(1551)
○	7 ½ year	(1552)
○	11 ½ year	(1553)

Small Entity

	Fee	Code
○	3 ½ year	(2551)
◉	7 ½ year	(2552)
○	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

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	/JAMES F. HARVEY, III/	Date (YYYY-MM-DD)	2007-04-20
Name	JAMES F. HARVEY, III	Registration Number	39706

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 record s.

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

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

In re Patent No. 5894012
Issue Date: April 13,1999
Application No. 08420848
Filed: April 10,1995
Attorney Docket No. 87168-003

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed April 20,2007 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 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 April 20,2007 . 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 an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

Telephone inquires related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

DATE MAILED : FEBRUARY 17, 2000
PAPER NUMBER: 30

CLIFFORD A. POFF
P.O. BOX 1185
PITTSBURG PA 15230-1185

RESPONSE TO REQUEST FOR REFUND

In re Application of	: ALEXANDER CONRAD
Application No.	: 08/421,810
Filed	: 04/13/95
Attorney Docket No.	: 20259-14

This is in response to your letter submitted on March 22,1999, wherein you requested a refund of $ 412.00 in the above-identified application.

The request for refund is **DENIED**.

After thorough inspection of U.S. Patent and Trademark Office physical records and Revenue Accounting Management financial records, it is determined that you are not entitled to a refund of $ 412.00. Money paid by actual mistake or in excess will be refunded, **but a mere change of purpose after the payment of money will not entitle a party to such a return.**

Please review the attached PTO-1360 and PTO-875 forms enclosed herewith.

Telephone inquiries concerning this matter may be directed to Verlene Green at (703) 305-7643.

Merilyn S. Watts
HSLIE, Tech. Center 3700
(703)308-1730

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)
5485883	1996-01-23	08423024	1995-04-17	10067

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

	Fee	Code
○	3 ½ year	(1551)
○	7 ½ year	(1552)
○	11 ½ year	(1553)

Small Entity

	Fee	Code
○	3 ½ year	(2551)
○	7 ½ year	(2552)
◉	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

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	/Cornelius P. Dukelow/	Date (YYYY-MM-DD)	2008-06-12
Name	Cornelius P. Dukelow	Registration Number	52839

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 record s.

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

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

In re Patent No. 5485883
Issue Date: January 23,1996
Application No. 08423024
Filed: April 17,1995
Attorney Docket No. UET03

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed June 12,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 June 12,2008 . 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 an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

Telephone inquires related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

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
DIW Jul-06

ANTONELLI TERRY STOUT & KRAUS
1300 NORTH SEVENTEENTH STREET
SUITE 1800
ARLINGTON VA 22209

COPY MAILED

JUL 19 2006

OFFICE OF PETITIONS

In re Patent No. 5,680,410 :
Issued: 21 October, 1997 :
Application No. 08/424,399 : DECISION ON PETITION
Filed: 22 June, 1995 :
Attny. Docket No. 501.33652X00 :

This is a decision on the petition under 37 CFR 1.378(c),[1] filed on 21 April, 2006, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The patent issued on 21 October, 1997. The window for payment of the second maintenance fee installment with a surcharge closed on 21 October, 2005. Therefore, since this petition was filed within twenty-four (24) months of the six-month grace period provided in 37 CFR 1.362(e), this petition was timely filed under the provisions of 37 CFR 1.378(c).

Accordingly, the maintenance fee in this case is hereby accepted and the above-identified patent is hereby reinstated as of the mail date of this decision.

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

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

[1] 37 CFR 1.378(c) provides that a petition to accept an unintentionally delayed payment of a maintenance fee must be filed within twenty-four months of the six-month grace period provided in § 1.362(e) and must include:
(1) The required maintenance fee set forth in § 1.20(e) through (g);
(2) The surcharge set forth in § 1.20(i)(2); and
(3) A statement that the delay in payment of the maintenance fee was unintentional.

UNITED STATES PATENT and TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 23313-1450
WWW.USPTO.GOV

Mailed: DEC 17 2004

GAC
Paper No. 12

In re Application of Malone.
Serial No.: 08/425938
Filed: April 19, 1995

DECISION ON PETITION UNDER *37 CFR 1.48(a)*

Title: Molten Metal Reactor Swing System and Process

This is a decision on the PETITION TO CORRECT INVENTORSHIP IN A NON-PROVISIONAL PATENT APPLICATION filed May 21, 2004 to correct inventorship under 37 CFR 1.48(a) by adding the names of Thomas C. Holcombe to the list of inventors of the instant application.

It is noted that amendments of the inventorship under 37 C.F.R. § 1.48(a) requires (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; (4) providing the processing fee set forth in 1.17(i); and, (5) providing the written consent of the assignee.

With the petition, Applicant has enclosed items (1), (2),(4), and (5), however, a declaration as required by 37 C.F.R. § 1.63 has not been provided.

The request is therefore **Denied**.

Glenn A Caldarola
Supervisory Patent Examiner
Art Unit 1764
Technology Center 1700

P.O. Box 916
Toledo, Ohio 43697-0916
(419) 243-1294

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)
5697393	1997-12-16	08426280	1995-04-21	

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

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	/Peter N. Lalos/	Date (YYYY-MM-DD)	2007-03-09
Name	Peter N. Lalos	Registration Number	19789

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.**

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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 record s.

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

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

In re Patent No. 5697393
Issue Date: December 16,1997
Application No. 08426280
Filed: April 21,1995
Attorney Docket No. MIRL-02-214

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed March 9,2007 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 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 March 9,2007 . 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 an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

Telephone inquires related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER OF
PATENTS AND TRADEMARKS
Washington, D.C. 20231

Paper No. 24

LAWRENCE HARBIN
MCINTYRE HARBIN & KING
ONE MASSACHUSETTS AVENUE, SUITE 330
WASHINGTON, D.C. 20001

COPY MAILED

JAN 29 2001

OFFICE OF PETITIONS
A/C PATENTS

In re Patent No. 5586121 :
Issue Date: December 17, 1996 :
Application No. 08/426,920 : ON PETITION
Filed: April 21, 1995 :
Patentee(s) Eduardo J. Moura et al. :

This is a decision on the petition under 37 CFR 1.378(c), filed January 26, 2001, to accept the delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

Telephone inquiries concerning this decision should be directed to Irvin Dingle at (703) 306-5684.

The patent file is being forwarded to Files Repository.

Irvin Dingle
Petitions Examiner
Office of Petitions
Office of the Deputy Assistant Commissioner
for Patent Policy and Projects

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

MAIL

NOV 3 0 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Patent No. 5,586,121
Issue Date: December 17, 1996
Appl No.: 08/426,920
Filed: April 21, 1995
For: Moura et al.

DECISION GRANTING PETITION
37 CFR 1.324

This is a decision on the petition filed July 27, 2005 to correct inventorship under 37 CFR 1.324.

The petition is granted.

The patented file is being forwarded to Certificate of Corrections Branch for issuance of a certificate naming only the actual inventor or inventors.

Seema S. Rao 11/16/05
Seema S. Rao
Supervisory Patent Examiner
Art Unit 2666
Technology Center 2600

HILL & HUNN, LLP
201 MAIN STREET
SUITE 1440
FORT WORTH, TX 76102

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE

Patent No. 5,586,121
Patented: December 17, 1996

On petition requesting issuance of a certificate for correction of inventorship pursuant to 35 U.S.C. 256, it has been found that the above identified patent, through error and without deceptive intent, improperly sets forth the inventorship. Accordingly, it is hereby certified that the correct inventorship of this patent is:

Eduardo J. Moura, San Jose, CA;
Jan M. Gronski, Palo Alto, CA;
Robert L. Packer; Los Gatos, CA;
Robert A. Luxenberg, Woodside, CA;
Frederick Enns, Menlo Park, CA

Seema S. Rao 11/16/05

Seema S. Rao
Supervisory Patent Examiner
Art Unit 2666

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

DATE: November 16, 2005
TO: Certificates of Correction Branch
FROM: Seema S. Rao
SPE, Art Unit 2666
SUBJECT: REQUEST FOR CERTIFICATE OF CORRECTION

Please issue a Certificate of Correction in U. S. Letters Patent No. 5,586,121 as specified on the attached Certificate.

Seema S. Rao 11/16/05
Seema S. Rao, SPE
Art Unit 2666

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)
5640724	1997-06-24	08427614	1995-04-24	01126.P3

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)
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○	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

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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

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	/Craig M. Stainbrook/	Date (YYYY-MM-DD)	2007-01-05
Name	CRAIG M. STAINBROOK	Registration Number	45126

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.**

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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 record s.

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

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

In re Patent No. 5640724
Issue Date: June 24,1997
Application No. 08427614
Filed: April 24,1995
Attorney Docket No. 95-920

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed February 2,2007 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 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 February 2,2007 . 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 an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

Telephone inquires related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Paper No. ___

ANTONELLI TERRY STOUT & KRAUS
1300 NORTH SEVENTEENTH STREET
SUITE 1800
ARLINGTON, VIRGINIA 22209

COPY MAILED

MAY 2 2 2001

OFFICE OF PETITIONS
A/C PATENTS

In re Application of :
Hisataka Sugiyama et al :
Application No. 08/427,866 :
Filed: April 26, 1995 :
Attorney Docket No. 500.31617CX1 :

AND

DECISION ON PETITION

In re Application of :
Hisataka Sugiyama et al :
Application No. 08/464,461 :
Filed: June 5, 1995 :
Attorney Docket No. 500.31617CX2 :
Now Patent No. 5,614,938
Issue Date: March 25, 1997

The above-identified files are before this office to consider the petition filed June 6, 2000, in Application No. 08/427,866 requesting withdrawal of the erroneous holding of abandonment.

The petition is **granted**.

A review of the file history of Application No. 08/427,866 indicates that this application was filed on April 26, 1999 as a 37 CFR 1.60 continuation application of Application No. 07/958,162 (now Patent No. 5,414,451, which issued on May 9, 1995), containing claims 1 through 12.

On June 5, 1995, a request for filing a continuation application under 37 CFR 1.60, along with a copy of the specification, claims and drawings, of Application No. 08/427,866, was filed. The continuation papers filed on June 5, 1995 were assigned Application No. 08/464,461 and apparently were processed as a filewrapper continuation application under 37 CFR 1.62 of Application No. 08/427,866. Thereafter, a nonfinal Office action was mailed on March 12, 1996 and, on June 12, 1996, an amendment was filed canceling claims 1 through 12 and adding claims 13 through 17 (which were later renumbered as claims 1 through 5 (which are the same claims as now appears in the issued patent). A Notice of Allowance and a Notice of Allowability were mailed on September 17, 1996. In reply, the issue fee was paid on December 13, 1996, and Application No. 08/464,461 subsequently issued as Patent No. 5,614,938 on March 25, 1977.

Unfortunately, the Group, now Technology Center, apparently processed the 37 CFR 1.60 application papers filed on June 5, 1995 as an application filed pursuant to the provisions of 37 CFR 1.62; hence the PALM records at the USPTO indicating that the '866 application is abandoned. As noted above, however, the transmittal letter for the application papers filed on June 7, 1995, were clearly marked as having been filed under the provisions of former 37 CFR 1.60, as a continuation (and copy) of application No. 08/427,866 which did not require the abandonment of the parent application as a condition of obtaining a filing date. Any indication of abandonment of the '866 application is manifestly in error, is hereby **vacated**, and as indicated, *infra*, will be corrected by the Technology Center.

It is noted that while application No. 08/464,461 was filed June 5, 1995, the specification therein and one transmittal letter therein are date stamped April 26, 1995. It is also noted that the specification in application No. 08/427,866, filed April 26, 1995, is date stamped filed June 6, 1995, and the transmittal letter filed June 6, 1995, is also placed in that file It appears that the Group, now Technology Center, inadvertently switched the earlier filed papers for application No. 08/427,866 into the later filed application No. 08/464,461, and *vice versa*. Nevertheless, such is immaterial, as each specification is, ultimately, pursuant to 37 CFR 1.60, a copy of the parent application No. 07/958,162 filed October 8, 1992. Accordingly, to minimize confusion and disruption of the contents of a patented file, the specifications and transmittal letters, notwithstanding the dates stamped thereon and the filing dates accorded to each respective application, will each remain in the file wrapper in which they currently reside.

Application No. 08/464,461 (now U.S. 5,614,938) is being forwarded to the Files Repository.

Application No. 08/427,866 is being forwarded to Technology Center AU 2853 for correction of PALM records to show that this application is pending; is not the parent of a file wrapper continuation application; and examination on the merits.

Telephone inquiries related to this decision should be directed to the undersigned at (703) 305-1820.

Brian Hearn

Brian Hearn
Senior Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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)
5562394	1996-10-08	08427888	1995-04-26	08-1267.01

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

	Fee	Code
◯	3 ½ year	(1551)
◯	7 ½ year	(1552)
◯	11 ½ year	(1553)

Small Entity

	Fee	Code
◯	3 ½ year	(2551)
◯	7 ½ year	(2552)
◉	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

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	/Steven M. Clodfelter/	Date (YYYY-MM-DD)	2008-11-25
Name	Steven M. Clodfelter	Registration Number	34564

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 record s.

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

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

In re Patent No. 5562394
Issue Date: October 8,1996
Application No. 08427888
Filed: April 26,1995
Attorney Docket No.

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed November 25,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 November 25,2008 . 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

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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OFFICE OF PETITIONS

CROWELL & MORING LLP
INTELLECTUAL PROPERTY GROUP
P.O. BOX 14300
WASHINGTON, DC 20044-4300

In re Application of :
Masato Okabe :
Application No. 08/428,325 : DECISION ON PETITION
Filed: April 25, 1995 :
Attorney Docket No. 2122-4028 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 27, 2009, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for a failure respond to a Notice Under 37 CFR 1.251 – Pending Application mailed August 10, 2006. The Notice set a period to reply of three (3) months from the mail date of the Notice. Accordingly, the application became abandoned on November 10, 2006. This decision precedes the mailing of a Notice of Abandonment.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a copy of the documents required, (2) the petition fee of 1,620, and (3) a proper statement of unintentional delay[1].

The terminal disclaimer is accepted and has been made of record. Any continuing application filed from this application must contain a copy of the terminal disclaimer. The copy of the terminal disclaimer must be filed with a cover letter requesting the terminal disclaimer be recorded on the continuing application. A copy of this decision should be attached to the cover letter.

[1] 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. While 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, 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 undersigned at (571) 272-3204.

This application is being referred to Technology Center AU 2871 for appropriate action in the normal course of business on the reply received August 27, 2009.

Sherry D. Brinkley
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)
5653992	1997-08-05	08429375	1995-04-26	ETH-928

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

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	/Kendal M. Sheets/	Date (YYYY-MM-DD)	2010-01-19
Name	Kendal M. Sheets	Registration Number	47077

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.**

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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.

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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.

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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

In re Patent No. 5653992
Issue Date: August 5,1997
Application No. 08429375
Filed: April 26,1995
Attorney Docket No. ETH-928

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed January 19,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 January 19,2010 . 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)
5632709	1997-05-27	08430479	1995-04-28	RM33a

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

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	/Bennett Sigmond/	Date (YYYY-MM-DD)	2009-12-15
Name	Bennett Sigmond	Registration Number	63807

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

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

In re Patent No. 5632709
Issue Date: May 27,1997
Application No. 08430479
Filed: April 28,1995
Attorney Docket No. RM33A

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed December 15,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 December 15,2009 . 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 DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER OF
PATENTS AND TRADEMARKS
Washington, D.C. 20231

Paper No. 24

SETH A FIDEL
ALEXION PHARMACEUTICALS INC
25 SCIENCE PARK
SUITE 360
NEW HAVEN, CT 06511

COPY MAILED

MAY 0 8 2000

SPECIAL PROGRAMS OFFICE
DAC FOR PATENTS

In re Application of
Steven H. Nye et al.
Application No. 08/431,644
Filed: May 2, 1995
Attorney Docket No. ALX-150

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed February 8, 2000, 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** final agency action within the meaning of 5 U.S.C. § 704.

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 October 26, 1998, 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 above-identified application became abandoned on January 27, 1999.

A grantable petition under 37 CFR 1.137(b)[1] must be accompanied by: (1) the required reply,[2] 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)(III)(C) and (D). The instant petition lack(s) item(s) (1), (3), and (4).

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 October 26, 1998. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 1.17(b)), an amendment that *prima facie* places the application in condition for allowance, or the filing of a continuing application. See MPEP 711.03(c)(III)(A)(2). Since the amendment submitted does not *prima facie* place the application in condition for allowance, the reply required must be a Notice of Appeal (and appeal fee) or the filing of a continuing application. Alternatively, the reply requirement may be met by the filing of a submission under 37 CFR 1.129(a) if the above-identified application is eligible for such transitional practice.

Since the above-identified application is a utility or plant application filed before June 8, 1995, 37 CFR 1.137(c) requires a terminal disclaimer dedicating to the public a terminal part of the term of any patent granted on the above-identified application or any patent granted on any continuing application that contains a specific reference under 35 U.S.C. 120, 121, or 3659(c) to the above-identified application. The period to be disclaimed will be a terminal part of the patent to be granted equivalent to the period of abandonment. The period of abandonment will be computed to be the number of months from the date of abandonment to the date of filing a grantable petition. A terminal disclaimer fee of $110 is required. If the terminal disclaimer is signed by an assignee, the assignee must comply with the requirements of 37 CFR 3.73(b).

The power of attorney filed concurrently with the petition is not acceptable and will not be entered since compliance with 37 CFR 3.73(b) has not been satisfied.

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

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[1] As amended effective December 1, 1997. See Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53194-95 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 119-20 (October 21, 1997).

[2] 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.

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By facsimile: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
Arlington, VA 22202

Telephone inquiries concerning this decision should be directed to Wan Laymon at (703)305-9282.

Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Assistant Commissioner
for Patent Policy and Projects

Marianne Morgan
Petitions Examiner

Attachments: Certificate under 37 CFR 3.73(b)
Terminal Disclaimer Form

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov
DIW 10-00

Paper No. 27

SETH A FIDEL
ALEXION PHARMACEUTICALS INC
25 SCIENCE PARK, SUITE 360
NEW HAVEN, CT 06511

COPY MAILED

OCT 27 2000

OFFICE OF PETITIONS
A/C PATENTS

In re Application of :
Nye et al. :
Application No. 08/431,644 : ON PETITION
Filed: 2 May, 1995 :
Attorney Docket No. ALX-150 :

This is a decision on the renewed petition filed on 7 August, 2000, under 37 CFR 1.137(b)[1], 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.

The instant application became abandoned on 27 January, 1999, for failure to

---

[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)).

submit a timely response to the final Office action mailed on 26 October, 1998, which set a three (3)-month shortened statutory period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on 7 June, 1999. The petition to revive filed on 8 February, 2000, was dismissed in a decision mailed on 8 May, 2000.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (**1**) the required reply (unless previously filed), which may met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute, but must be the payment of the issue fee or any outstanding balance thereof in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof; (**2**) the petition fee required by 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**) a terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)). This petition lacks items ONE (1), THREE (3), and FOUR (4) above.

In reference to item (1), the Petition is not accompanied by a proper response as required by 37 CFR 1.137(b)(1). The only proper response to a final rejection is a timely filed amendment which *prima facie* places the application in condition for allowance, a Notice of Appeal, or the filing of a continuing application. The amendment filed on 7 August, 2000, has been determined not to *prima facie* place the case in condition for allowance.

In reference to item (3), the petition does not include an appropriate statement of unintentional delay. Effective 1 December, 1997, 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" be submitted. Petitioner should utilize the enclosed form for filing a petition under 37 CFR 1.137(b) when filing a renewed petition.

In reference to item (4), since the above-identified application was filed before 8 June, 1995, 37 CFR 1.137(c) requires a terminal disclaimer dedicating to the public a terminal part of the term of any patent granted on the above-identified application or any patent granted on any continuing application that contains a specific reference under 35 U.S.C. 120, 121, or 365(c) to the above-identified application. Petitioner must submit the terminal disclaimer fee of $110.00 with any renewed petition.

Additionally, effective 8 September, 2000, 37 CFR 1.137(c)(1) has been added to state that a terminal disclaimer filed pursuant to this rule must dedicate to the

public a terminal part of the term of any patent granted thereon equivalent to the lesser of: (1) the period of abandonment of the application; or (2) the period extending beyond twenty years from the date on which the application for the patent was filed in the United States, or, if the application contains a specific reference to an earlier filed application(s) under 35 U.S.C. §§ 120, 121, or 365(c), from the date on which the earliest such application was filed.[2] Accordingly, any terminal disclaimer filed must track this language verbatim, and the period of any terminal disclaimer filed will be equivalent to the lesser of period (1) or (2), as noted above. Therefore, petitioner must file a new terminal disclaimer incorporating the current language. A copy of the terminal disclaimer is attached for petitioner's convenience.

It is noted that although petitioner submitted the fees for the initial petition under 37 CFR 1.137(b) filed on 8 February, 2000, and the extension of time filed with the present petition, in the small entity amount, no statement of entitlement to small entity status was ever filed in this case. As such, petitioner must submit these fees in the amount for other than an small entity must be paid. The deficiency is based on the amount of the fee, for other than a small entity, in effect at the time the deficiency is paid in full.[3] If small entity status is appropriate, petitioner must submit a written assertion of entitlement to small entity status.

The current fee for a petition under 37 CFR 1.137(b) is $1,240.00. As petitioner submited $605.00 with the petition filed on 8 February, 2000, a balance of $635.00 is due. Additionally, the present renewed petition is accompanied by a petition and payment of the fee (small entity amount) for a three month extension of the time for reply to the Office action mailed on 26 October, 1998. Pursuant to 37 CFR 1.136, an extension of time must be filed prior to the expiration of the maximum period obtainable for reply to avoid abandonment. Accordingly, since the extension of time fee submitted on 7 August, 2000, for a three month extension of the time for reply to the Office action mailed on 26 October, 1998, was subsequent to the maximum period obtainable for reply, this fee is unnecessary. Petitioner has filed the present petition, however, within three months of the mailing date of the decision dismissing the initial petition, mailed on 8 May, 2000. Therefore, petitioner must obtain a one (1) month extension of the time for reply to that decision, and pay the required fee of $110.00. The total amount of the deficiency due is therefore $645.00. As petitioner submitted $625.00 with the present petition, counsel's Deposit Account No. 50-0707 will be charged $20.00 as authorized in the petition filed on 7 August, 2000.

---

[2] 65 Fed. Reg. 54,674 (2000).

[3] 37 CFR 1.28(c).

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

By mail: Commissioner of Patents and Trademarks
Box DAC
Washington, D.C. 20231

By FAX: (703)308-6916
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite CP4-3C23
2201 South Clark Place
Arlington, VA 22202

Telephone inquiries concerning this matter may be directed to the undersigned at (703)308-6918.

Douglas I. Wood
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: Form PTO/SB/63
Form PTO/SB/64
Privacy Act Form

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Paper No. 34

MARK FARBER
ALEXION PHARMACEUTICALS INC
352 KNOTTER DRIVE
CHESHIRE, CT 06410

COPY MAILED

JAN 23 2001

OFFICE OF PETITIONS
A/C PATENTS

In re Application of :
Steven H. Nye et al. :
Application No. 08/431,644 : ON PETITION
Filed: May 2, 1995 :
Attorney Docket No. 27 :

This is a decision on the renewed petition under 37 CFR 1.137(b), filed December 20, 2000, to revive the above-identified application.

The petition is GRANTED.

The two-month period for filing an appeal brief in triplicate (accompanied by the fee required by 37 CFR 1.17(c)), runs from the date of this decision.

The terminal disclaimer filed December 20, 2000 under 37 CFR 1.137(d) has been entered and made of record. 37 CFR 1.137(d)(1)[1] states that a terminal disclaimer filed pursuant to this rule must dedicate to the public a terminal part of the term of any patent granted thereon equivalent to the lesser of: 1) the period of abandonment of the application; or 2) the period extending beyond twenty years from the date on which the application for the patent was filed in the United States, or, if the application contains a specific reference to an earlier filed application(s) under 35 U.S.C. 120, 121 or 365(c), from the date on which the earliest such application was filed.

Telephone inquiries concerning this decision should be directed to Wan Laymon at (703) 305-9282.

[1] Effective September 20, 2000 (65 Fed. Reg. 54674, September 8, 2000).

The application file is being forwarded to Technology Center 1600.

Wan Laymon

Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte Spehrley et al.

Application No. 08/432,783
Appeal No. 2006-2178

DECISION ON PETITION

This is a decision on the Request for Appearance Pro Hac Vice, filed August 1, 2006, seeking authorization for the appearance of unregistered attorney Erin Henson at the hearing in this appeal on August 9, 2006. The Request will be treated as a Petition under 37 C.F.R. § 41.5. As set forth in the Petition, the reason for seeking authorization for Ms. Henson's appearance is that she has "greater familiarity with the merits of the case" than Applicants' registered attorney of record.

The relevant facts are: (1) this application has been pending for over 11 years and the prosecution history is extensive, (2) this appeal has been pending since September 1999, and (3) the original prosecuting attorney is no longer of record in the application. Accordingly, in the interest of justice, Ms. Henson will be permitted to appear and speak at the hearing as counsel on behalf of Applicants on the condition that a registered attorney currently of record in the application accompanies her. The **Petition is Granted** on condition.

Michael R. Fleming
Chief Administrative Patent Judge
Board of Patent Appeals and Interferences

Faustino A. Lichauco
Fish & Richadson P.C.
225 Franklin Street
Boston, MA 022110

Tel: (617) 542-5070
Fax: (617) 542-8906

Confirmation Report – Memory Send

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Date : Aug-02 02:48pm

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BOARD OF PATENT APPEALS AND INTERFERENCES

FACSIMILE TRANSMITTAL SHEET

TO: FAUSTINO A. LICHAUCO	FROM: KIMBERLY JORDAN
FAX NUMBER: (617) 542-8906	DATE: AUGUST 2, 2006
COMPANY: FISH & RICHARDSON P.C.	TOTAL NO. OF PAGES INCLUDING COVER: 3
PHONE NUMBER: (617) 5425070	SENDER'S REFERENCE NUMBER: 2006-2178
RE: COURTESY COPY OF DECISION ON PETITION	YOUR REFERENCE NUMBER:

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

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PHONE: (571) 272-9797 • FAX: (571) 273-0299

BOARD OF PATENT APPEALS AND INTERFERENCES

FACSIMILE TRANSMITTAL SHEET

TO: FAUSTINO A. LICHAUCO	FROM: KIMBERLY JORDAN
FAX NUMBER: (617) 542-8906	DATE: AUGUST 2, 2006
COMPANY: FISH & RICHARDSON P.C.	TOTAL NO. OF PAGES INCLUDING COVER: 3
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RE: COURTESY COPY OF DECISION ON PETITION	YOUR REFERENCE NUMBER:

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NOTES/COMMENTS:

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PHONE: (571) 272-9797 • FAX: (571) 273-0299

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: —

DATE : 11/14/07

TO SPE OF : ART UNIT 2861

SUBJECT : Request for Certificate of Correction for Appl. No.: 8/432783 Patent No: 7237872 B1

A response is requested with respect to a request for a certificate of correction.

With respect to the change(s) requested to correct Office and/or Applicant's errors, should the patent read as shown in the certificate of correction attached herewith or the COCIN document(s), in IFW images for the above-identified patented application? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

If the response is for an IFW, within 7 days, please complete and forward the response, to the employee (named below) via scanning into application images, using document code **COCX**.

If the response is for a paper file wrapper, please complete the response and forward the response with the paper file wrapper, to the employee (named below), within 7 days, to:

Certificates of Correction Branch (CofC)
South Tower - 9A22
Palm Location 7580

VIRGINIA TOLBERT
Certificates of Correction Branch
703-308-9390 ext. 113

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: _____

_____

_____

_____

_____

_____ 2861
SPE **Art Unit**

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)
5,646,598	1997-07-08	08/432,831	1995-05-02	

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

A Joint Patentee and I certify that I am authorized to sign this submission on behalf of all the other patentees			
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	/Aaron Nickles/	Date (YYYY-MM-DD)	2007-02-22
Name	Aaron Nickles		

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.**

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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 record s.

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

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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In re Patent No. 5646598
Issue Date: July 8,1997
Application No. 08432831
Filed: May 2,1995
Attorney Docket No.

:

:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)

:

This is a decision on the electronic petition, filed February 22,2007 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 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 February 22,2007 . 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 an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

Telephone inquires 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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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

JAN 26 2007

LAWRENCE M LAVIN JR
MONSANTO COMPANY -BB4F
700 CHESTERFIELD PARKWAY NORTH
ST LOUIS MO 63198

In re Application of	:
David a. Fischhoffet al	:
Serial No.: 08/434,105	: PETITION DECISION
Filed: May 3, 1995	:
Attorney Docket No.: 28079/41785	:

This is a response to the petitions under 37 CFR 1.59(b), filed December 6, 2006, to expunge information from the above identified application.

Petitioner requests that documents submitted December 6, 2006, as a Proprietary Information Disclosure Statement be expunged from the record. Petitioner states either: (A) that the information contains trade secret material, proprietary material and/or material that is subject to a protective order which has not been made public; or (B) that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted, and the information has not otherwise been made public. The petition fee set forth in 37 CFR 1.17(h) has been paid.

This application has not yet been examined on the merits. Applicants have submitted a Proprietary Information Document, but the information provided has not been reviewed and the petition cannot be granted at this time. As stated in M.P.E.P. 724, upon allowance or other action closing prosecution in an application petition may be made for return of Proprietary Information Disclosure Statements.

The petition is **DISMISSED**. Applicants may resubmit the petition subsequent to a Notice of Allowability or *ex parte Quayle* action being mailed in the application. No additional petition fee will be required at that time.

The application will be forwarded to the examiner for consideration of the information submitted and further action as warranted.

Should there be any questions with respect to this decision, please contact William R. Dixon, Jr., by mail addressed to: Director, Technology Center 1600, at the above address, or by telephone at 571-272-0519 or by facsimile transmission at general Office facsimile number, 571-273-8300.

George C. Elliott

George Elliott
Director, Technology Center 1600

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.
08/434,105	05/03/1995	DAVID A FISCHHOFF	28079/41785	2627

7590 06/05/2009

David A. Gass
MARSHALL, GERSTEIN & BORUN LLP
233 S. Wacker Drive, Suite 6300
Sears Tower
Chicago, IL 60606-6357

EXAMINER	
KUBELIK, ANNE R	

ART UNIT	PAPER NUMBER
1638	

MAIL DATE	DELIVERY MODE
06/05/2009	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
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P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

David A. Gass
MARSHALL, GERSTEIN & BORUN LLP
233 S. Wacker Drive, Suite 6300
Sears Tower
Chicago IL 60606-6357

JUN 0 5 2009

In re Application of :
Fischhoff et al.
Serial No.: 08/434,105
Filed: May 3, 1995
Attorney Docket No.: **28079/41785**

: PETITION DECISION

This is in response to the petition under 37 CFR § 1.59(b), filed June 1, 2009, to expunge information from the above identified application. This application has not been allowed

Petitioner requests that the Proprietary Information Disclosure Statement, June 1, 2009 be expunged from the record as the documents are subject to one or more protective orders, and have not otherwise been made public. Petitioner states either: (A) that the information contains trade secret material, proprietary material and/or material that is subject to a protective order which has not been made public; or (B) that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted, and the information has not otherwise been made public. The petition fee set forth in 37 CFR § 1.17(g) has been paid.

This application is under non-final action. Also, the information provided has not been reviewed. As stated in M.P.E.P. 724, upon allowance or other action closing prosecution in an application, petition may be made for return of Proprietary information. The information cannot be expunged at this time.

The petition is **DISMISSED**. Petitioner may resubmit the petition subsequent to a Notice of Allowability or *ex parte Quayle* action being mailed in the application. No additional petition fee will be required at that time

Should there be any questions about this decision please contact Marianne C. Seidel by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile sent to the general Office facsimile number, 703-872-9306.

Marianne C. Seidel
Quality Assurance Specialist
Technology Center 1600

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 NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/434,105	05/03/1995	DAVID A FISCHHOFF	28079/41785	2627

74002 7590 01/12/2010

Marshall, Gerstein & Borun LLP (Monsanto)
6300 Sears Tower
233 South Wacker Drive
Chicago, IL 60606

EXAMINER	
KUBELIK, ANNE R	

ART UNIT	PAPER NUMBER
1638	

MAIL DATE	DELIVERY MODE
01/12/2010	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

Commissioner for Patents
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P.O. Box 1450
Alexandria, VA 22313-1450
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David A. Gass
MARSHALL, GERSTEIN & BORUN LLP
233 S. Wacker Drive, Suite 6300
Sears Tower
Chicago IL 60606-6357

JAN 1 2 2010

In re Application of :
Fischhoff et al.
Serial No.: 08/434,105
Filed: May 3, 1995
Attorney Docket No.: **28079/41785**

: PETITION DECISION

This is in response to the renewed petition under 37 CFR § 1.59(b), filed January 8, 2010, to expunge information from the above identified application. This application has been allowed.

Petitioner requests that the Proprietary Information Disclosure Statements entered into the record on December 5, 2006, and June 1, 2009, respectively be expunged from the record as the documents are subject to one or more protective orders, and have not otherwise been made public. Petitioner states either: (A) that the information contains trade secret material, proprietary material and/or material that is subject to a protective order which has not been made public; or (B) that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted, and the information has not otherwise been made public. The petition fee set forth in 37 CFR § 1.17(g) has been paid.

The reasons set forth in this petition establishes to the satisfaction of the Director that expungement of the information is appropriate. The file entry for this document has been closed and as such the document is no longer publicly available, which is the IFW equivalent to removal of a paper document from a paper file wrapper.

Therefore, petitioner's petition is GRANTED.

Should there be any questions about this decision please contact Marianne C. Seidel by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile sent to the general Office facsimile number, 703-872-9306.

Marianne C. Seidel
Quality Assurance Specialist
Technology Center 1600

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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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DANIEL H. BOBIS
LERNER DAVID LITTENBERG
KRUMHOLZ & MENTLIK
600 SOUTH AVENUE WEST
WESTFIELD NJ 07090

MAILED

MAR 26 2009

OFFICE OF PETITIONS

In re Application of
Andrew R. Ferber
Application No. 08/434,370
Filed: May 3, 1995
Attorney Docket No. AMERICRAFT-3

DECISION ON REQUEST FOR REFUND

This is a decision on the Request For Refund filed March 3, 2009.

The request is ***DISMISSED***.

Patentee request a refund of the large entity portion of the third maintenance fee payment on January 14, 2009. However, a review of the Office finance history shows that the initial 3.5 year and 7.5 year maintenance fees were also paid as a large entity presumably based on an actual loss of entitlement to small entity status, particularly as the first two payments were not stated in the March 3, 2009 paper to have been in error (only the third payment). **Accordingly, applicant must again qualify for small entity status for paying a small entity 11.5 year payment by submitting a new assertion of entitlement to small entity status pursuant to § 1.27 and a timely (§ 1.28(a)) refund request based on the new assertion.** The March 3, 2009 statement that the wrong box was checked in the 11.5 year payment is not sufficient to support a refund.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

Karen Creasy

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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Paper No. 52

JONES DAY
222 EAST 41ST ST
NEW YORK NY 10017

COPY MAILED

APR 2 1 2005

OFFICE OF PETITIONS

In re Application of :
John K. Rose :
Application No. 08/435,032 : DECISION ON PETITION
Filed: May 4, 1999 :
Attorney Docket No. 6523-005 :

This is a decision on the petition under 37 CFR 1.183, filed November 9, 2004, requesting waiver of the requirements of 37 CFR 1.97(d) so that the Information Disclosure Statement (IDS) filed concurrently may be considered and entered by the Examiner.

Applicant requests waiver of the rule on the following basis:

> The subject application was involved in Interference No. 104,431, which was resolved in favor of Applicant John K. Rose. As a result of the interference, the prosecution for the application was suspended from July 19, 2000 until the August 9, 2004 mailing of a Notice of Allowance by the United States Patent and Trademark Office (the "Patent Office"). Indeed, Applicant and his attorneys became aware of the removal of the suspension only upon receipt of the Notice of Allowance. During the period which prosecution was suspended, a reference . . . was cited by the Examiner in a European Patent Office Communication mailed June 4, 2003 in connection with prosecution of a European counterpart of the above-identified application, which reference had not been made of record in the prosecution of the captioned application.
>
> Because the present application is a "pre-GATT application," *i.e.*, it was filed before June 8, 1995, Applicant is unable to avail himself of the provisions of 37 C.F.R. § 1.114, permitting the filing of a Request for Continued Examination, which would allow Applicant to make

> the cited reference of record by way of an Information Disclosure Statement under 37 C.F.R. § 1.97(b)(4). Thus, to make the cited reference of record, a "post-GATT" continuation or continued prosecution application would have to be filed. The repercussions of filing such an application, however, would be the effective denial to Applicant of approximately seven years of patent term.

Petition dated November 9, 2004, pp. 1-2.

Applicant submitted the above-noted IDS subsequent to the mailing of Notice of Allowance on August 9, 2004. Accordingly, for the Office to consider the IDS, applicant must satisfy the requirements of 37 CFR 1.97(d)(1)-(2). Applicant is required to submit a statement as specified in 37 CFR 1.97(e) and the fee set forth in § 1.17(q).

The regulations pertaining to the submission of an IDS do not require that an IDS be filed, but rather, set forth the conditions under which the Office will consider information promptly brought to its attention by an applicant. Further, these conditions are linked to the stage of prosecution at the time of the submission of the IDS, as it is necessary for the Office to balance its need to consider all information relevant to an application with its desire for an efficient operation, as well as its capability to consider information at various stages in the prosecution of an application.

The Office will grant a petition under 37 CFR 1.183, where an applicant demonstrates that an extraordinary situation exists such that justice requires waiver of the rule. In re Sivertz, 227 U.S.P.Q. 255, 256 (Comm'r Pat. 1985). In the present petition, applicant has not shown that either condition exists in this case. Specifically, applicant has not set forth an explanation for the belated submission of the IDS, much less attempted to demonstrate that the delay in the submission was caused by "extraordinary circumstances" such that "justice requires" waiver of the requirement for certification set forth in 37 CFR 1.97(d)(1).

The Office acknowledges that when an interference is declared, *ex parte* prosecution of an application involved in the interference is suspended. 37 CFR 1.615. The Office further acknowledges that amendments and other papers related to the application received during the pendency of the interference will not be "entered" or considered in the interference without the consent of an administrative judge, but rather will be placed in the application file. Id. The fact that an interference was declared did not

preclude applicant from timely submitting the IDS. See MPEP 609. After termination of the interference, the examiner would have considered the IDS as if it was filed in the ordinary course of the *ex parte* prosecution of the application. Moreover, the Office will undertake to consider information *throughout the pendency of an application* until the point where the issue fee has been paid, as long as the appropriate requirements of 37 CFR 1.97 are met at that stage of prosecution when the IDS is submitted. Id.

Applicant does not provide any explanation for applicant's protracted delay in filing the IDS and bringing it to the attention of the Office, such that the three month time period of 37 CFR 1.97(e)(1) should be waived. Applicant has not demonstrated that the protracted delay in the submission of the IDS was caused by circumstances beyond applicant's control. The Office notes that equitable powers should not be invoked to excuse the performance of a condition by a party that has not acted with reasonable due care and diligence. See United States v. Lockheed Petroleum Servs., 709 F.2d 1472, 1475 (Fed. Cir. 1983). Furthermore, where the Office has the power to do so, it should not relax the requirements of established practice to save an applicant from the consequence of his delay. See Ex Parte Sassin, 1906 Dec. Comm'r. Pat. 205, 206 (Comm'r Pat. 1906) and compare Ziegler v. Baxter v. Natta, 159 USPQ 378, 379 (Comm'r Pat. 1968).

There is no adequate showing of "an extraordinary situation" in which "justice requires" suspension of 37 CFR 1.97(d). See Nitto Chem. Indus. Co. v. Comer, 39 USPQ2d 1778, 1782 (D.D.C. 1994)(circumstances are not extraordinary, and do not require waiver of the rules, when a party makes an avoidable mistake in filing papers). Circumstances resulting from applicant's, or applicant's counsel's, failure to exercise due care or to properly apply the patent statutes or rules of practice are not extraordinary circumstances where the interests of justice require the granting of relief. See In re Tetrafluor, Inc., 17 USPQ2d 1160, 1162 (Comm'r Pat. 1990).

Nevertheless, applicant has a suitable remedy on hand for his predicament that does not require the extraordinary remedy of invoking 37 CFR 1.183. Applicant is reminded that the Office will not normally consider an extraordinary remedy when the rules already provide an avenue for obtaining the relief sought. See Cantello v. Rasmussen, 220 USPQ 664 (Comm'r Pat. 1982). As set forth in Section 609(B)(3) of the Manual of Patent Examining Procedure, an applicant wishing to have the Office consider an IDS, where, as apparently

herein, the necessary certification cannot be made, an applicant may file a continuing application under 37 CFR 1.53(b) to have the information considered by the examiner. While applicant complains that filing a continuation application would result in a loss of 7 years of patent term, the Office notes that it is the delay of applicant, not the Office, in submitting the IDS, which necessitates such action.

Moreover, the statutes and regulations do not compel an applicant to claim benefit under 35 USC § 120 of any earlier case that might shorten the term of a forthcoming patent under 35 USC § 154. Nevertheless, should applicant desire the potential benefits of earlier application(s) pursuant 35 USC § 120, than applicant must also accept the consequences attendant to that action. See Abbott Lab. v. Novopharm Ltd., 38 USPQ2d 1309, 1312 (N.D. Ill. 1996), *aff'd* 104 F.3d. 1305 (Fed. Cir. 1997).

In view of the above, the petition is dismissed. The IDS filed November 9, 2004, has been placed in the application file. However, the Office will not waive the requirements of 37 CFR 1.97(d).

The $130.00 petition fee will be charged to Deposit Account No. 50-3013, as authorized.

The application file is being forwarded to Technology Center Art Unit 1648.

Telephone inquiries relevant to this decision may be addressed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

DATE 2/5/09 APPLICATION NUMBER 08/435893

DOC CODE _____ DOC DATE _____

DELIVER THE ATTACHED FIFLE/DOCUMENT TO THE TC SCANNING CENTER

CONTRACTOR: THE ATTACHED FILE/DOCUMENT MUST BE INDEXED AND SCANNED INTO IFW WITHIN 8 WORK HOURS; UPLOADING OF THE SCANNED IMAGES SHOULD OCCUR NO LATER THAN 16 WORK HOURS FOLLOWING RECEIPT OF THIS REQUEST

AFTER SCANNING, ORIGINAL DOCUMENTS SHOULD BE BOXED IN ACCORDANCE WITH INSTRUCTIONS

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PATENT & TRADEMARK OFFICE

COMPLETED

PLEVY & ASSOCIATES
P O BOX 1366
EDISON, NJ 08818-1366

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NOV 19 2008

In re Patent No. 5,593,451
Issue Date: January 14, 1997
Application No. 08/435,893
Filed: May 5, 1995
Attorney Docket No. IMPLEX-3-DIV

NOTICE

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28, filed on October 23, 2008.

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.

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 Mr. Matthew B. Skaggs 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. Skaggs 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 Mr. Skaggs, 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.

Your fee deficiency submission under 37 CFR 1.28 is hereby **DISMISSED AS MOOT**.

This patent was granted large entity status on December 22, 2006. Accordingly, all 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) 272-6059.

Alicia Kelley
Petitions Examiner
Office of Petitions

cc: MATTHEW B. SKAGGS
BAKER & DANIELS LLP
111 E. WAYNE STREET, SUITE 800
FORT WAYNE, IN 46802

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)
5563073	1996-10-08	08436925	1995-05-08	Ttest-073

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

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	/Scott C Harris/	Date (YYYY-MM-DD)	2010-03-03
Name	Scott C Harris	Registration Number	32030

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

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

In re Patent No. 5563073
Issue Date: October 8,1996
Application No. 08436925
Filed: May 8,1995
Attorney Docket No. 111-053

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed March 3,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 March 3,2010 . 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)
5677456	1997-10-14	08438886	1995-05-10	A29836-II

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

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	/Kendal M. Sheets/	Date (YYYY-MM-DD)	2009-11-05
Name	Kendal M. Sheets	Registration Number	47077

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

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

In re Patent No. 5677456
Issue Date: October 14,1997
Application No. 08438886
Filed: May 10,1995
Attorney Docket No. A29836-II

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed November 5,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 November 5,2009 . 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)
5637522	1997-06-10	08438917	1995-05-10	ID006310

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

	Fee	Code
○	3 ½ year	(1551)
○	7 ½ year	(1552)
◉	11 ½ year	(1553)

Small Entity

	Fee	Code
○	3 ½ year	(2551)
○	7 ½ year	(2552)
○	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

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	/DJCushing/	Date (YYYY-MM-DD)	2010-03-04
Name	David J. Cushing	Registration Number	28703

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

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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.

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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

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

In re Patent No. 5637522
Issue Date: June 10,1997
Application No. 08438917
Filed: May 10,1995
Attorney Docket No. 900734D

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed March 4,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 March 4,2010 . 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.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 07/08/09

TO SPE OF : ART UNIT 1631

SUBJECT : Request for Certificate of Correction for Appl. No.: 08439095 Patent No.: 7727671 B1

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 9C62-D
Palm Location 7580
You can fax the Directors/SPE response to 571-270-9990

Lamonte Newsome
Certificates of Correction Branch
703-756-1574

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: _____

_____

_____

_____

_____

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

/Marjorie A. Moran/ 1631

SPE Art Unit

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)
5,793,859	1998-08-11	08/439,299	1995-05-11	

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

The Assignee of record of the entire interest			
Under 37 CFR 3.71 an assignee becomes of record by filing a statement in compliance with 37 CFR 3.73(b). Signature requirements are set forth in 37 CFR 1.4(d), and the undersigned certifies that he / she is empowered to act on behalf of the assignee of the entire interest			
Signature	/Jannette T. Duncan/	Date (YYYY-MM-DD)	2008-06-16
Name	Jannette T. Duncan, Managing Partner		
Enter Reel and Frame Number		Remove	
Reel Number	008537	Frame Number	0542
Enter Reel and Frame Number		Remove	
Reel Number	010572	Frame Number	0578
Enter Reel and Frame Number		Remove	
Reel Number	021018	Frame Number	0897
Enter Reel and Frame Number		Remove	
Reel Number	021018	Frame Number	0915
Click ADD for additional Reel Number and Frame Number		Add	

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.**

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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.

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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

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

In re Patent No. 5793859
Issue Date: August 11,1998
Application No. 08439299
Filed: May 11,1995
Attorney Docket No. 046720.0126

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed June 17,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 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 June 17,2008 . 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 an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

Telephone inquires related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

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

In re Patent No. 5545006
Issue Date: August 13,1996
Application No. 08440045
Filed: May 12,1995
Attorney Docket No. 209/174

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed October 1,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 October 1,2008 . 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.

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)
5545006	1996-08-13	08440045	1995-05-12	70022-00014

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

	Fee	Code
○	3 ½ year	(1551)
○	7 ½ year	(1552)
◉	11 ½ year	(1553)

Small Entity

	Fee	Code
○	3 ½ year	(2551)
○	7 ½ year	(2552)
○	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

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	/John D. McConaghy/	Date (YYYY-MM-DD)	2008-09-30
Name	John D. McConaghy	Registration Number	26773

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

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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 record s.

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

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

FULWIDER PATTON LLP
HOWARD HUGHES CENTER
6060 CENTER DRIVE, TENTH FLOOR
LOS ANGELES, CA 90045

MAILED

JUN 16 2010

OFFICE OF PETITIONS

In re Application of
Joseph J. Engleson, et al.
Application No. 08/440,625
Filed: May 15, 1995
Attorney Docket No. IVAC-37266

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 April 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. 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 Thomas A. Runk 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
Petitions Examiner
Office of Petitions

cc: **CAREFUSION 303, INC.**
3750 TORREY VIEW COURT
SAN DIEGO, CA 92130

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
08/440,625	05/15/1995	JOSEPH J. ENGLESON	IVAC-37266

CONFIRMATION NO. 1020

POWER OF ATTORNEY NOTICE

24201
FULWIDER PATTON LLP
HOWARD HUGHES CENTER
6060 CENTER DRIVE, TENTH FLOOR
LOS ANGELES, CA 90045

Date Mailed: 06/15/2010

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 04/01/2010.

- 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.

/tsjohnson/

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

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER OF PATENTS
AND TRADEMARKS
Washington, D.C. 20231

Paper No. 7

AMY E. MANDRAGOURAS
LAHIVE & COCKFIELD, LLP
28 STATE STREET
BOSTON, MA 02109

COPY MAILED

FEB 01 2000

SPECIAL PROGRAMS OFFICE
DAC FOR PATENTS

In re Application of
Mohan F. Singh, et al.
Application No. 08/441,501
Filed: May 15, 1995
Attorney Docket No. IMI-049DV2

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed December 2, 1998, to revive the above-identified application. The petition is being treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment.

The petition is **granted**.

This application was held abandoned on October 1, 1999 for failure to respond to the nonfinal Office action mailed on August 30, 1999, which set a one month period for reply. A Notice of Abandonment was mailed on October 1, 1999.

Petitioner telephoned the Office on October 20, 1999 informing the Office that the August 30, 1999 Office action was never received by the applicants. After ordering the file from Files Repository and reviewing its contents, it was determined that the Office action was mailed to an address not related to the applicants. The Office sincerely apologizes for this error and any resulting inconvenience. Consequently, to remedy the mailing error, the Office action was faxed to petitioner on or about November 2, 1999 and a reply was timely received within the designated one month period on December 2, 1999. Accordingly, the holding of abandonment for this application is withdrawn.

The Revocation and Power of Attorney and the Certificate Under 3.73(b), both filed on January 13, 2000, have been accepted and entered into the official record for this application.

Because the holding of abandonment for this application was not proper, the terminal disclaimer submitted on January 13, 2000 is not necessary.

The $605.00 small entity petition fee and the $55.00 small entity terminal disclaimer fee are being refunded to petitioner's deposit account, No. 12-0080, as authorized.

This application is being forwarded to Technology Center 1600 for review of the substitute specification and sequence listing filed on December 2, 1999.

Telephone inquiries concerning this matter should be directed to the undersigned at (703) 306-3313.

Karen Canaan

Karen Canaan
Petitions Attorney
Office of Petitions
Office of the Deputy Assistant Commissioner
for Patent Policy and Projects

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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www.uspto.gov

BAKER & DANIELS LLP
805 15TH STREET, NW, SUITE 700
WASHINGTON DC 20005

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SEP 29 2008

OFFICE OF PETITIONS

In re Application of
Mohan B. Singh et al.
Application No. 08/441,501
Filed: May 15, 19954
Attorney Docket No. IMI0-49DV2RCE

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b)[1], filed July 24, 2008, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on June 29, 2008, for failure to timely file a reply to the Final Office action mailed March 28, 2008, which set a three (3) month shortened statutory period for reply. No extensions of time under 37 CFR 1.136(a) were obtained. The instant petition and this decision precede the mailing of the Notice of Abandonment.

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 $1540.00; and (3) an adequate statement of unintentional delay.

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[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)).

The Examiner has determined that the amendment filed with the present petition is acceptable. The matter therefore is being referred to Technology Center 1648.

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

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)
5646781	1997-07-08	08441624	1995-05-15	

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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
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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

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I certify, in accordance with 37 CFR 1.4(d)(4) that I am

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◉ 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

Sole Patentee			
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	/Robert L. Johnson, Jr./	Date (YYYY-MM-DD)	2009-12-30
Name	Robert L. Johnson, Jr.		

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In re Patent No. 5646781
Issue Date: July 8,1997
Application No. 08441624
Filed: May 15,1995
Attorney Docket No. 00165/7000

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

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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
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Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
5,576,717	1996-11-19	08/441,776	1995-05-16	22493-154

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◯ 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

The Assignee of record of the entire interest			
Under 37 CFR 3.71 an assignee becomes of record by filing a statement in compliance with 37 CFR 3.73(b). Signature requirements are set forth in 37 CFR 1.4(d), and the undersigned certifies that he / she is empowered to act on behalf of the assignee of the entire interest			
Signature	/Jean-Pierre FORTIN/	Date (YYYY-MM-DD)	2009-11-20
Name	Jean-Pierre FORTIN		
Enter Reel and Frame Number		Remove	
Reel Number	007505	Frame Number	0395
Enter Reel and Frame Number		Remove	
Reel Number	007500	Frame Number	0410
Enter Reel and Frame Number		Remove	
Reel Number	010567	Frame Number	0001
Enter Reel and Frame Number		Remove	
Reel Number	011195	Frame Number	0706
Click ADD for additional Reel Number and Frame Number		Add	

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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.

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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.

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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

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

In re Patent No. 5576717
Issue Date: November 19,1996
Application No. 08441776
Filed: May 16,1995
Attorney Docket No. 476-1363.7

:

:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)

:

This is a decision on the electronic petition, filed November 20,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 November 20,2009 . 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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Paper No. 16

Donald E. Stout (For Patent Owner)
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Enclosure: Copy of Requester Petition filed May 6, 2003

David L. Stewart (For Requester)
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MAILED
JUN 0 6 2003
REEXAM UNIT

Enclosures: Request papers deposited December 26, 2002

In re Campana, Jr. et al.	:	
Request For Reexamination Proceeding	:	DECISION
For: U.S. Patent No. 5,631,946	:	DENYING
Deposited[1]: April 17, 2003	:	PETITION

This is a decision on the May 6, 2003, third party requestor petition under 37 CFR 1.181 for(1) withdrawal of the notice of April 22, 2003,[2] as improper since jurisdiction is proper, (2) waiver of 37 CFR 1.535(g) and 1.560 to thus permit requestor to participate in a reexamination under 35 U.S.C. 301-307, (3) an order of a Director Initiated Reexamination under 35 U.S.C. 313, and (4) deferral of the effective date for an election required by the April 22, 2003, Notice. The petition is before the Director of the Office of Patent Legal Administration for decision..

[1] The request papers are stated as having been "deposited," as opposed to "filed," since no filing date has been assigned to the papers.

[2] The April 22, 2003, notice informed requester that the present patent for which *inter partes* reexamination was requested was not eligible for *inter partes* reexamination pursuant to Section 4608 of the American Inventor's Protection Act.

For the reasons set forth below, the petition is denied. In addition, the request papers are being returned to the requester, and the reexamination filing fee submitted with the request papers will be refunded to requester.

REVIEW OF FACTS

1. U.S. Patent No. 5,631,946 (hereinafter, the '946 patent), issued to Campana, Jr. et al., on May 20, 1997, from an application filed on May 16, 1995.

2. On December 26, 2002, reexamination was ordered for five of patent owner's patents. The order for reexamination was issued at the initiative of the Director of the United States Patent and Trademark Office under 37 CFR 1.520. The patents and their assigned control number are: 5,625,670 (90/006,491); 5,631,946 (90/006,492); 5,819,172 (90/006,493); 6,067,451 (90/006,494); and 6,317,592 (90/006,495).

3. The 90/006,492 reexamination proceeding, for the present '946 patent, is pending before the Office, and the Office records do not indicate that a first Office action has issued at this point in time.

4. On April 17, 2003, the present request for *inter partes* reexamination was deposited in the Office by the third party requester.

5. On April 22, 2003, a notice was issued informing requester that the present patent for which *inter partes* reexamination was requested was not eligible for *inter partes* reexamination (pursuant to Section 4608 of the American Inventor's Protection Act). The notice set a two week period for requester to elect to replace the *inter partes* request for reexamination with an *ex parte* request for reexamination under 37 CFR 1.510, pointing out that if such an election was not received within the two week period, the request papers would be returned to requester.

6. On May 6, 2003, requester filed the instant petition requesting (1) withdrawal of the notice as improper, (2) waiver of 37 CFR 1.535(g) and 1.560 to permit requestor participation in a reexamination under 35 U.S.C. 301-307, (3) a Director Initiated Reexamination under 35 U.S.C. 313, and (4) deferral of the effective date for an election required by the notice.

DECISION

The petition sets forth, at page 1, a request for four types of relief using the conjunction "and" which would appear to indicate that all four types of relief are requested together (i.e., additive grounds). It is, however, clear from the remainder of the petition that the four types of relief requested by petitioner are alternative grounds of relief, and each will be addressed below, in turn, to the extent appropriate.

I. "[W]ithdrawal of the notice of April 22, 2003 as improper since jurisdiction is proper."

The reexamination statute was amended on November 29, 1999, by the 1999 American Inventors Protection Act (AIPA), Public Law 106-113, to expand reexamination by providing an "*inter partes*" option. [3] Section 4608 (effective date) of the AIPA provides:

> "(a) In General. – .... this subtitle and the amendments made by this subtitle shall take effect on the date of the enactment of this Act [November 29, 1999] and shall apply to any patent that issues from an original application filed in the United States on or after that date [November 29, 1999]." [emphasis added]

As was pointed out in the April 22, 2003, notice, the application for the patent for which the present reexamination was requested was filed prior to November 29, 1999 (the date of enactment of the AIPA), and, accordingly, the instant patent is not eligible for *inter partes* reexamination.

At pages 4-7 of the present petition, legislative history is presented and discussed with respect to circumstances surrounding the providing of *inter partes* reexamination in the enactment of the AIPA. These circumstances do not change the fact that the legislation was enacted by Congress, and it was signed into law by the President of the United States of America. In addition, while legislative history is useful in interpreting statutory language where the language of the statute is open to interpretation, in the present instance, the plain language of the statute is clear and not ambiguous. The enacted "subtitle and the amendments" made thereby are clearly stated (in Section 4608)

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[3] See Title IV, subtitle F (§§ 4601 through 4608) of the "Intellectual Property and Communications Omnibus Reform Act of 1999," S. 1948 (106th Cong. 1st Sess. (1999)) - Enacted as part of Pub. L. 106-113, 113 Stat. 1501, 1501A-552 through 1501A-591 (1999).

to apply "to any patent that issues from an original application filed in the United States on or after" the date of enactment (November 29, 1999). The application for the patent for which the present reexamination was requested was filed prior to that date, and thus is not eligible for *inter partes* reexamination, pursuant to the *clear language* of the statute.

At page 2 of the petition, it is argued that Congress reconsidered Section 4608 of the AIPA, and repealed it "by implication" by way of "at least sections 13106 and 13202 of Public Law 107-273 [4] "[Footnote for the enactment added].

In response, note that Section 13106 of P.L. 107-273 is directed solely to *appeals* in *inter partes* reexamination and expands third party requester rights of appeal in an *inter partes* reexamination proceeding. Further, Section 13202 is directed solely to *appeals* in *ex parte* reexamination and makes statutory technical corrections with respect to same. Neither of Sections 13106 and 13202, nor any other provision of P.L. 107-273, is directed to expanding the eligibility of the pool of patents eligible for *inter partes* reexamination.

Petitioner asserts in the petition that Congress passed the AIPA legislation in haste and did not "substantively consider Section 4608." At page 7 of the petition, applicant states:

> "[W]hen the Justice Department Reauthorization Act was considered, since 4608 was not part of Title 35, it is not likely that Congress was anymore aware at the time of the passage in the Justice Department Reauthorization Act, that there were any limitations on the Inter Partes Reexamination practice by virtue of the date on which a patent issued. As a result, Congress granted, in sections 13106 and 13201 of the Justice Department Reauthorization Act a plenary right of appeal to any third party Inter Partes Reexamination requestor apparently under the assumption that participation rights were a given."

With respect to this point, it is to be noted that Congress had ample time to consider and reconsider Section 4608 of the AIPA, before passing H.R. 2215 (the underlying legislation incorporated as part of Title III, Subtitle A (Patent and Trademark Office) of Public Law 107-273), and its precursor bills. Yet H.R. 2215 did not revise the *inter partes* reexamination eligibility provision,

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[4] See the 21st Century Department of Justice Appropriations Authorization Act, TITLE III- INTELLECTUAL PROPERTY, Subtitle A - the "Patent and Trademark Office Authorization Act of 2002" - Enacted as part of Pub. L. 107-273, 116 Stat. 1758, 1899-1906 (2002).

while it did, at the same time, revise other reexamination effective date provisions. This shows a clear intent on the part of Congress to retain the *inter partes* reexamination eligibility provision of Section 4608 of the AIPA as-is, i.e., as it was enacted.

It is further to be noted that revision the *inter partes* reexamination eligibility provision was explicitly placed before Congress by way of Section 3(a) of H.R. 2231 introduced by Congressman Lofgren on June 19, 2001, [5] and referred to the House committee.[6] Yet it was not carried forward in H.R. 2215 which was incorporated into Public Law 107-273. Congress could have chosen to carry forward the substance of Section 3(a) of H.R. 2231, but declined to do so.

In view of the above, the April 22, 2003, notice, is deemed proper, and it will not be withdrawn. The first item of relief requested is accordingly denied.

II. "[W]aiver of 37 C.F.R 1.535(g) and 1.560 to permit Requestor to participate in Reexamination under 35 U.S.C. 301-307."

At pages 9-10 of the petition, requester urges that, if it elects to convert the request deposited April 17, 2003, to a request for *ex parte* reexamination, 37 CFR 1.535 and 1.560 should be waived pursuant to 37 CFR 1.183 to permit requester to participate in the reexamination proceeding. At page 15 of the petition, it is requested that *ex parte* reexamination procedure be "expanded by waver of 37 C.F.R 1.535 and 1.560." This is in effect a petition under 37 CFR 1.183 for waiver of the rules (though it was submitted as a "request").

37 CFR 1.4(c) provides that "each distinct subject, inquiry or order must be contained in a separate paper to avoid confusion and delay in answering papers dealing with different subjects." [Emphasis added]

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[5] 107th CONGRESS, 1st Session

[6] This bill was co-sponsored by Congressman Coble, who introduced the H.R. 1886 *inter partes* reexamination appeal provision which ultimately became Section 13106 of P.L. 107-273 which petitioner advances at page 2 of the petition.

The present request for a waiver of the rules is a distinct "subject" and/or "inquiry," and should have been provided in the form of a separate petition paper under 37 CFR 1.183, accompanied by the petition fee set forth in 37 CFR 1.17(h). Petitioner did not provide the separate petition paper, and did not provide the required petition fee. Accordingly, the issue is not ripe for a decision, and will not be decided herein.

It is, however, pointed out to petitioner that relief by way of a waiver of the rules cannot be provided in this instance, because third party requester participation in an *ex parte* reexamination is barred by statute, and the statute cannot be waived. Neither the rules nor any provision of the statute provide authority for a third party requester of a reexamination proceeding requested under 35 U.S.C. 302 to file a paper directed to the issues of the reexamination proceeding. *In re Amp*, 212 USPQ 826 (Comr. Pats. 1981). The statute and its intent are clear that a reexamination proceeding requested under 35 U.S.C. 302 must be *ex parte*. *Syntex (U.S.A.) Inc. v. U.S. Patent and Trademark Office*, 11 USPQ2d 1866, 1869 (Fed. Cir. 1989) (third parties do not participate before the USPTO).

III. "[T]hat the Patent and Trademark Office order a Director Initiated Reexamination under 35 U.S.C. 313."

At page 15 of the petition, it is stated:

> "If neither of the previous requests for relief a granted, Requestor specifically requests that the Director of the Patent and Trademark Office initiate Inter Partes Reexamination under 35 U.S.C. 313 and allow Requestor to participate."

The present request for a Director Initiated Reexamination must be made via a petition under 37 CFR 1.182, since it is for "a question not specifically provided for." While 37 CFR 1.520 provides that the Director may order a reexamination at his initiative, even where a reexamination has not been requested under 37 CFR 1.510 or 1.913, 37 CFR 1.520 does not provide for a member of the public to request that the Director order reexamination at his own initiative. Further, 37 CFR 1.520 does not provide for a Director Initiated ***Inter Partes*** Reexamination, and there is no 1.900-series rule that does so. Thus, the present request for a Director Initiated Reexamination is clearly for relief "not specifically provided for in the regulations of this part," and such a request must be made via a petition under 37 CFR 1.182.

As noted above, 37 CFR 1.4(c) provides that each distinct subject, inquiry or order must be contained in a separate paper. The present request for a Director Initiated Reexamination is a distinct "subject" and/or "inquiry," and it should have been provided in the form of a separate petition paper under 37 CFR 1.182, accompanied by the petition fee set forth in 37 CFR 1.17(h). Petitioner did not provide the separate petition paper, and did not provide the required petition fee. Accordingly, the issue is not ripe for a decision, and will not be decided herein.

It is, however, pointed out to petitioner that relief by way of a Director Initiated ***Inter Partes*** Reexamination is not statutorily available to requester. The reference to a Director Initiated Reexamination in 35 U.S.C. 312(a) was explicitly deleted in a technical correction made by Section 13202(a)(2) of Public Law 107-273 (the 21st Century Department of Justice Appropriations Authorization Act, enacted November 2, 2002).[7]

Accordingly, the reference to "section 312(a)" made in 35 U.S.C. 313 does not include a Director Initiated Reexamination for *inter partes* reexamination.

IV. "[D]eferral of the effective date for an election required by the Notice."

At page 15 of the petition, it is stated:

> "The Patents Special Projects Advisor indicated that Requestor must elect whether to pursue Inter Partes Reexamination or elect to convert the Inter Partes Request to an Ex Parte Request by the due date. Since that election cannot be reasonably be made without knowing the outcome of Patent and Trademark Office consideration of his petition and since Requestor has made a contingent election, Requestor requests that the requirement of the Patents Special Projects Advisor be held in abeyance until decision on this Petition is received by Requestor."

---

[7] The revision made to 35 U.S.C. 312(a) by P.L. 107-273 is shown as follows in strike-out/underline format:

REEXAMINATION.— Not later than 3 months after the filing of a request for inter partes reexamination under section 311, the Director shall determine whether a substantial new question of patentability affecting any claim of the patent concerned is raised by the request, with or without consideration of other patents or printed publications. ~~On the Director's initiative, and at any time, the Director may determine whether a substantial new question of patentability is raised by patents and publications.~~ The existence of a substantial new question of patentability is not precluded by the fact that a patent or printed publication was previously cited by or to the Office or considered by the Office.

The request for a deferral of the effective date for the election required by the Notice must be made via a petition under 37 CFR 1.182, since it is for "a question not specifically provided for." Once again, petitioner has not provided a separate petition paper, nor the required petition fee. Accordingly, the issue is not ripe for a decision. The following is however pointed out to petitioner:

The third party requester has the option to initiate an *ex parte* reexamination of the instant patent by filing a new request for *ex parte* reexamination. Such a filing would not prejudice requestor, as compared to having the present reexamination papers converted at a future time as is requested in the petition. Requester would not be prejudiced because there is no negative consequence that would result from having a later filing date for a reexamination proceeding. Further, the filing fee that accompanied the present request papers is being returned in its entirety, so, requester does not lose any filing fee applied. Thus, the relief requested by petitioner could be obtained via a different avenue, and there would be no ground for granting a petition under 37 CFR 1.182, even if such had been properly filed.

RETURN OF PAPERS

The notice to requester of April 22, 2003 stated, as its last paragraph:

> "The *inter partes* reexamination 'request' papers are being temporarily held in the CRU pending a decision as to whether or not requester wants to replace the *inter partes* request for reexamination with an ex parte request for reexamination under 37 CFR 1.510. **If such decision is NOT received within two (2) weeks from the mailing date of this letter, the request papers will be returned to the requester.**"

The instant petition was filed within the two week period; however, an election was not made in the petition.

At page 9 of the petition, a "Conditional Election" is stated as follows:

> "...if the Inter Partes Request for Reexamination of eight NTP patents is not granted, applicants elect to convert those Inter Partes Reexamination requests to ex parte requests, provided that the provisions of 37 C.F.R. 1.535 (g) and 1.560 are waived to permit requestor participation." [Emphasis added]

A waiver of 37 CFR 1.535(g) and 1.560 has not been granted in this decision; thus, the stated conditional election does not take effect.

In addition, the requested deferral of the effective date for an election required by the April 22, 2003, Notice has not been granted. Accordingly, the request papers are being **returned** with this decision.

The petition, and the present decision on the petition will be made of record in the patent file.

LACK OF SERVICE

The requisite proof of service (a Certificate of Service) on the patent owner was not included with the instant petition papers. Pursuant to 37 CFR 1.903

> "... any document filed by either the patent owner or the third party requester must be served on every other party in the reexamination proceeding in the manner provided in § 1.248. Any document must reflect service or the document may be refused consideration by the Office. The failure of the patent owner or the third party requester to serve documents may result in their being refused consideration."

Accordingly, the requester's petition is deficient for failure to reflect service of the response on the patent owner in accordance with 37 CFR 1.903.

Since the requisite proof of service on patent owner has not been included, a copy of the petition is being provided to the patent owner with this decision.

REFUND OF REEXAMINATION FILING FEE

The present deposit of an *inter partes* reexamination was made in error for the reasons set forth above. Pursuant to 35 U.S.C. § 42(d), "[t]he Director may refund any fee paid by mistake...." Accordingly, **a refund** of the $8,800 reexamination filing fee will be made to requester in due course by return of the check that was submitted with the request.

THIRD PARTY REQUESTER'S RECOURSE

In the event that the third party requester desires to initiate an *ex parte* reexamination of the instant patent, requester may wish to consider filing a new request for *ex parte* reexamination. Such a filing should include a specific identification of each substantial new question of patentability based on the cited patents and printed publications, as well as a detailed explanation of the pertinency and manner of applying the patents and publications to every claim for which reexamination is requested.

CONCLUSION

1. The third party requestor petition filed May 6, 2003, pursuant to 37 CFR 1.181, is denied.

2. The request papers deposited April 17, 2003, are being returned to the requester with this decision.

3. The requestor petition filed May 6, 2003, and this decision will be made of record in the patent file.

4. A refund of the $8,800 reexamination filing fee will be made to requester by return of the check that was submitted with the request papers.

5. A copy of the requester petition filed May 6, 2003, is being sent to the patent owner, along with this decision.

6. Telephone inquiries with regard to this decision should be directed to Kenneth M. Schor, Senior Legal Advisor, at 703-308-6710.

Robert J. Spar
Director
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

June 3, 2003
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UNITED STATES PATENT AND TRADEMARK OFFICE

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MAILED

JUN 12 2003

REEXAM UNIT

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(For Requester)

In re Campana, Jr. et al.
Request for *Inter Partes* Reexamination Proceeding
For: U.S. Patent No. 5,631,946
Deposited[1]: April 17, 2003

: **SUPPLEMENTAL**
: **DECISION**
: **DENYING**
: **PETITION**

This is a supplemental decision to the decision mailed on June 6, 2003, on the third party requester's petition of May 6, 2003. The June 6, 2003, decision denied the third party requester petition under 37 C.F.R. § 1.181 for (l) withdrawal of the notice of April 22, 2003,[2] as improper

[1] The request papers are stated as having been "deposited, " as opposed to "filed," since no filing date has been assigned to the papers.

[2] The April 22, 2003, notice informed requester that the present patent for which *inter partes* reexamination was requested was not eligible for *inter partes* reexamination pursuant to Section 4608 of the American Inventor's Protection Act.

since jurisdiction is proper, (2) waiver of 37 C.F.R. § 1.535(g) and § 1.560 to thus permit requester to participate in a reexamination under 35 U.S.C. 301-307, (3) an order of a Director Initiated Reexamination under 35 U.S.C. 313, and (4) deferral of the effective date for an election required by the Notice of April 22, 2003. This matter is before the Director of the Office of Patent Legal Administration for clarification.

For the reasons set forth in the decision of June 6, 2003, the petition was denied. In addition, the decision stated that the "request papers" and the reexamination filing fee submitted with the request papers were returned to the requester. This supplemental decision clarifies what was returned as the "request papers."

REVIEW OF FACTS

1. U.S. Patent No. 5,631,946 (hereinafter, the '946 patent), issued to Campana, Jr. et al., on May 20, 1997, from an application filed on May 16, 1995.

2. On April 17, 2003, a request for *inter partes* reexamination was deposited in the Office by the third party requester. The deposited request comprised "request papers" which include a statement that reexamination is requested, a table of contents (of the prior art references), a reference to the filing fee, and a copy of the '946 patent. In addition, the request included two boxes containing the copies of the references cited in the request, as well as claim charts interspersed therewith.

3. A notice was mailed on April 22, 2003, informing requester that the present patent for which *inter partes* reexamination was requested is **not eligible** for *inter partes* reexamination (pursuant to Section 4608 of the American Inventor's Protection Act). The notice set a two week period for requester to elect to replace the *inter partes* request for reexamination with an *ex parte* request for reexamination under 37 C.F.R. § 1.510, pointing out that if such an election was not received within the two week period, the request papers would be returned to requester.

4. On May 6, 2003, requester filed a petition requesting (1) withdrawal of the notice as improper, (2) waiver of 37 C.F.R. § 1.535(g) and § 1.560 to permit requester participation in a reexamination under 35 U.S.C. 301-307, (3) a Director Initiated Reexamination under 35 U.S.C. 313, and (4) deferral of the effective date for an election required by the notice.

5. A decision denying the petition was mailed on June 6, 2003[3].

[3] The address portion of the decision of June 6, 2003, inadvertently indicated that the enclosures sent to requester were request papers deposited December 26, 2002. The body of the decision, however, correctly states in the Conclusion on page 10 that the request papers being returned to requester were deposited on April 17, 2003.

CLARIFICATION RE: RETURN OF PAPERS

The Notice to requester mailed on April 22, 2003, stated in its' last paragraph:

> "The *inter partes* reexamination 'request' papers are being temporarily held in the CRU pending a decision as to whether or not requester wants to replace the *inter partes* request for reexamination with an *ex parte* request for reexamination under 37 C.F.R. § 1.510. **If such decision is NOT received within two (2) weeks from the mailing date of this letter, the request papers will be returned to the requester.**"

The petition of May 6, 2003, was filed within the two week period, however, an election was not made in the petition. In addition, the requested deferral of the effective date for an election required by the Notice of April 22, 2003, was not granted. Accordingly, the reexamination request was returned with the decision mailed June 6, 2003.

This supplemental decision clarifies that only the "request papers" were in fact returned with the June 6, 2003, decision; the boxes containing *inter alia* the references were not returned. The request papers which were returned include a statement that reexamination is requested, a table of contents (of the prior art references), a reference made as to the filing fee, and a copy of the '946 patent. The two boxes containing the copies of references cited in the request, as well as the claim chart interspersed therewith, were **not** returned **due to their voluminous nature.**

The boxes of reference copies which accompanied the request for *inter partes* reexamination are being temporarily held in the Central Reexamination Unit (CRU). If the third party requester desires a return of the boxes, then requester should promptly make arrangements to pick up such boxes from the CRU **within one month** of the mailing date of this supplemental decision. Requester should immediately notify Marsha Twitty of the CRU, at telephone number (703) 308-9692, of any arrangements that have been made to pick up such boxes. If the boxes are **not** picked up **within one month** of the mailing date of this supplemental decision, **the CRU may dispose of such boxes.**

The petition, the previous petition decision and the present supplemental decision denying the petition will be made of record in the patent file.

THIRD PARTY REQUESTER'S RECOURSE

As indicated in the previous petition decision, in the event that the third party requester desires to initiate an *ex parte* reexamination of the instant patent, requester may wish to consider filing a new request for *ex parte* reexamination pursuant to 37 C.F.R. § 1.510.

In this regard, note that the **mailing address** for the U.S. Patent & Trademark Office has **changed, as of May 1, 2003.**

All new **requests for an *ex parte* reexamination proceeding** should be directed:

by Mail to: Mail Stop *Ex Parte* Reexam
Central Reexamination Unit
Office of Patent Legal Administration
United States Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

All correspondence relating to an *inter partes* reexamination proceeding (a new request may not be submitted by FAX) should be directed:

by Mail to: Mail Stop *Inter Partes* Reexam
Central Reexamination Unit
Office of Patent Legal Administration
United States Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

by FAX to: (703) 305-1013
Central Reexamination Unit

By hand: Central Reexamination Unit
Crystal Plaza Three-Four, 3D68
2201 South Clark Place
Arlington, VA 22202

CONCLUSION

1. The third party requester petition filed May 6, 2003, pursuant to 37 C.F.R. § 1.181, was denied in a decision mailed on June 6, 2003, and the present decision is supplemental to that decision.

2. The request for *inter partes* reexamination deposited April 17, 2003, was returned to the requester with the petition decision of June 6, 2003. The return of the request included a refund of the $8,800 reexamination filing fee by return of the check that was submitted with the request and marked void.

3. The boxes of reference copies (including the claim chart interspersed with the reference copies) were not returned with the decision mailed on June 6, 2003, and the boxes are being temporarily stored in the CRU.

4. If the third party requester desires a return of the boxes, then requester should promptly make arrangements to pick up such boxes from the CRU **within one month** of the mailing date of this supplemental decision.

5. If the boxes are **not** picked up **within one month** of the mailing date of this supplemental decision, then the CRU **may dispose of such boxes**.

6. This decision will be made of record in the patent file, to accompany the petition and the June 6, 2003, decision.

7. Telephone inquiries with regard to this decision should be directed to Lynn M. Kryza, Patent Special Projects Advisor, at (703) 308-0255 or Kenneth Schor, Senior Legal Advisor, at (703) 308-6710. Telephone inquiries with regard to making arrangements for picking up the boxes of references presently stored in the CRU should be directed to Marsha Twitty at (703) 308-9692.

6/17/03

Robert J. Spar
Director
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

Decision Mailed

UNITED STATES PATENT AND TRADEMARK OFFICE

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www.uspto.gov

Paper No. 19

Donald E. Stout
Antonelli, Terry, Stout & Kraus
Suite 1800
1300 N. 17th Street
Arlington, VA 22209

(For Patent Owner)

Enclosure: Copy of Requester Petition filed July 31, 2003

David L. Stewart
ALLEN DYER DOPPELT MILBRATH
& GILCHRIST, P.A.
Suite 1401
Orlando, FL 32802

(For Requester)

MAILED
NOV 25 2003
REEXAM UNIT

Enclosure: Reexamination request papers deposited April 17, 2003

In re Campana, Jr. et al.
Request For Reexamination Proceeding
For: U.S. Patent No. 5,631,946
Deposited[1]: April 17, 2003

: DECISION
: DENYING
: PETITION

This is a decision on the July 31, 2003, third party requestor petition titled "Petition to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, in Person, from a Decision of the Director of the Office of Patent Legal Administration under 37 C.F.R. § 1.181."

The petition is **granted** to the extent that the June 6, 2003, and June 12, 2003, decisions of the Director of the Office of Patent Legal Administration (OPLA) have been reviewed by a higher level official within the United States Patent and Trademark Office (Office), but is **denied** as to overturning the decision by the Director of OPLA.

[1] The request papers are stated as having been "deposited," as opposed to "filed," since no filing date has been assigned to the papers.

REVIEW OF FACTS

1. U.S. Patent No. 5,631,946 (hereinafter, the '946 patent), issued to Campana, Jr. et al., on May 20, 1997, from an application filed on May 16, 1995.

2. On December 26, 2002, reexamination was ordered for five of patent owner's patents. The order for reexamination was issued at the initiative of the Director of the United States Patent and Trademark Office under 37 CFR 1.520. The patents and their assigned control number are: 5,625,670 (90/006,491); 5,631,946 (90/006,492); 5,819,172 (90/006,493); 6,067,451 (90/006,494); and 6,317,592 (90/006,495). The 90/006,492 reexamination proceeding, for the present '946 patent, is pending before the Office.

3. On April 17, 2003, the present request for *inter partes* reexamination was deposited in the Office by the third party requester.

4. On April 22, 2003, a notice was issued informing requester that the present patent for which *inter partes* reexamination was requested was not eligible for *inter partes* reexamination (pursuant to Section 4608 of the American Inventor's Protection Act). The notice set a two week period for requester to elect to replace the *inter partes* request for reexamination with an *ex parte* request for reexamination under 37 CFR 1.510, pointing out that if such an election was not received within the two week period, the request papers would be returned to requester.

5. On May 6, 2003, the requester filed a petition under 37 CFR 1.181, requesting (1) withdrawal of the notice as improper, (2) waiver of 37 CFR 1.535(g) and 1.560 to permit requestor participation in a reexamination under 35 U.S.C. 301-307, (3) a Director Initiated Reexamination under 35 U.S.C. 313, and (4) deferral of the effective date for an election required by the notice.

6. A decision of the Director of OPLA was mailed on June 6, 2003, and supplemented on June 12, 2003, in which the requestor petition under 37 CFR 1.181 filed May 6, 2003, was denied,[2] and for return of the deposited request papers to the requester.

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[2] Some of the issues raised in the May 6th petition were found not to be ripe for decision, and were not decided.

7. On June 24, 2003, the requester filed a request for an ***ex parte*** reexamination of the '946 patent, which was assigned control number 90/006,679.

8. On July 31, 2003, the requester filed the present petition under 37 CFR 1.181, for review of the decision of the Director of OPLA.

9. Also on July 31, 2003, the requester filed a petition under 37 CFR 1.183 requesting waiver of 37 CFR §§ 1.535, 1.550(g) and 1.560, to permit third party requester participation in the examination stage of the 90/006,679 *ex parte* reexamination proceeding.

REQUEST FOR PERSONAL REVIEW BY THE DIRECTOR

The petition is addressed to the Director of the United States Patent and Trademark Office (the Director). It is inappropriate and not feasible for the Director to personally review all papers requesting relief that are directed to him; such personal review is not a matter of right and lies within the sound discretion of the Director. *See Corrigan v. v. Alexeevsky, et al.*, 200 USPQ 368(Comr. Pat. 1978), *In re Staeger*, 189 USPQ 284 (Comr. Pat. 1974) The Director will not review a decision in person except in unusual or exceptional circumstances. *See Id.* In the present instance, the petition does not present unusual and exceptional circumstances that would justify the requested "In Person" review by the Director. Inasmuch as the authority for deciding petitions from a Decision of the Director of OPLA has been delegated to the Deputy Commissioner for Patent Examination Policy, the instant petition has been forwarded to the Deputy Commissioner for Patent Examination Policy for treatment as a petition under 37 CFR 1.181(a)(3) requesting review of the decision of the Director of OPLA by a higher level Office official.

DECISION

1. In his June 6, 2003, decision, the Director of OPLA found that the instant patent is not eligible for *inter partes* reexamination, and thus, the deposited papers requesting an *inter partes* reexamination of instant patent are to be returned to the requester. The present petition takes issue with, and seeks review of, that finding. As pointed out in the June 6th decision:

The reexamination statute was amended on November 29, 1999, by the 1999 American Inventors Protection Act (AIPA), Public Law 106-113, to expand reexamination by providing an "*inter partes*" option. [3] Section 4608 (effective date) of the AIPA provides:

> "(a) In General. – ... this subtitle and the amendments made by this subtitle shall take effect on the date of the enactment of this Act [November 29, 1999] and shall apply to any patent that issues from an original application filed in the United States on or after that date [November 29, 1999]." [emphasis added]

The application for the instant patent was filed prior to November 29, 1999 (the date of enactment of the AIPA), and, accordingly, the instant patent is not eligible for *inter partes* reexamination.

2. At page 4 of the petition, it is argued that:

> "the position taken in the decision(s) by the Director of the Office of Patent Legal Administration with respect to Section 4608 prohibits the PTO from declaring, in an Inter Partes proceeding, claims from a parent application to be unpatentable even though they are not patentably distinct from claims in a continuing application [filed on or after November 29, 1999]. In the Requests for Inter Partes Reexamination under consideration in this petition, the PTO has accepted Inter Partes Reexamination status for U.S. Patent No. 6,317,592, even though the claims of many of the above-identified applications are acknowledged as patentably not distinct by the filing of a Terminal Disclaimer."

In response, it is initially to be observed that while the claims from a parent application filed prior to November 29, 1999 cannot be declared "to be unpatentable" in an *inter partes* reexamination proceeding, petitioner is free to file a request for an *ex parte* reexamination proceeding (and has done so) in an effort to have such claims of the parent declared unpatentable. To the extent that petitioner is pointing out that it does not appear consistent to bar *inter partes* reexamination for a parent patent,

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[3] See Title IV, subtitle F (§§ 4601 through 4608) of the "Intellectual Property and Communications Omnibus Reform Act of 1999," S. 1948 (106th Cong. 1st Sess. (1999),) - Enacted as part of Pub. L. 106-113, 113 Stat. 1501, 1501A-552 through 1501A-591 (1999).

while such is permitted for a continuation having patentably indistinct claims, this is simply the result mandated by the effective date provision (section 4608) of the *inter partes* reexamination provisions of the AIPA. It is not within the authority of the Office to permit an *inter partes* reexamination for the instant patent, since the effective date provision (section 4608) of the *inter partes* reexamination provisions of the AIPA does not make the *inter partes* reexamination provisions of the AIPA applicable to a patent resulting from an application filed before November 29, 1999, simply because that patent contains one or more claims which are not patentably distinct from a patent resulting from an application filed on or after November 29, 1999, (and to which the *inter partes* reexamination provisions of the AIPA would apply).

3. At page 4 of the petition, it is pointed out that:

> "the position taken in the decision(s) by the Director of the Office of Patent Legal Administration with respect to Section 4608 effectively guts the applicability of Inter Partes Reexamination by limiting its applicability to only 3.9% of patents.... Given the legislative history, described somewhat below, it would require an extraordinary leap to assume that a majority of both houses of Congress intended Inter Partes Reexamination to apply to only 3.9% of issued patents."

As to the "legislative history," page 5 of the petition then presents comments directed to circumstances surrounding the providing of *inter partes* reexamination in the enactment of the AIPA, and as to the viability of using the *inter partes* reexamination process.

In addressing petitioner's argument of Congressional intent and legislative history, the following is to be noted:

Regardless of the circumstances of enactment and comments on viability of the enacted process, the legislation was enacted by Congress, and it was signed into law by the President of the United States of America. While legislative history may useful in interpreting statutory language where the language of the statute is open to interpretation, in the present instance, the plain language of the statute is clear and not ambiguous. The enacted "subtitle and the amendments" made thereby are clearly stated (in Section 4608) to apply "to any patent that issues from an original application filed in the United States on or after" the date of enactment (November 29, 1999). The application for the instant patent, for which the *inter partes* reexamination is

requested, was filed prior to that date; thus, the patent is not eligible for *inter partes* reexamination, pursuant to the *clear language* of the statute.

It is further noted that Congress had ample time to consider and reconsider Section 4608 of the AIPA, before passing H.R. 2215 (the underlying legislation incorporated as part of Title III, Subtitle A (Patent and Trademark Office) of Public Law 107-273), and its precursor bills. Yet H.R. 2215 did not revise the *inter partes* reexamination eligibility provision, while it did, at the same time, revise other reexamination effective date provisions. This shows a clear intent on the part of Congress to retain the *inter partes* reexamination eligibility provision of Section 4608 of the AIPA as-is, i.e., as it was enacted.

4. At pages 7-8 of the petition, a Constitutionality issue is raised. Petitioner argues that:

> "The Decision by the Director of the Office of Patent Legal Administration that the Patent and Trademark Office does not have authority under Section 4608 of the AIPA to accept the above-identified Requests for Inter Partes Reexamination is constitutionally questionable....Issuing a patent that is invalid based on prior art is an unconstitutional act because it gives exclusive rights to individuals who are not "inventors" in a Constitutional sense. Since issuing a patent that is invalid based on prior art is unconstitutional, the PTO has inherent authority to declare such issuance invalid and improper without the need for any authorizing legislation. Section 4608 may be unconstitutional to the extent it purports to limit an Executive Branch Agency (the PTO) in correcting its own unconstitutional acts."

Petitioner then[4] requests that the Office:

> "utilize its inherent Constitutional Authority to ignore 4608 and accept the above-described Requests for Inter Partes Reexamination. Petitioner respectfully requests that the PTO hold Section 4608 of the AIPA to be unconstitutional and accept the above-described Requests for Inter Partes Reexamination.

Petitioner appears to be arguing that the Section 4608 *inter partes* reexamination effective date provision is unwise and should not be adhered to, and that Article I, § 8, cl. 8 of the U.S. Constitution ("Congress shall have the power...[t]o promote the progress of science and useful arts, by securing for limited

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[4] Petition at page 8.

times to authors and inventors the exclusive right to their respective writings and discoveries") provides a basis for the Office to ignore the limitations in the AIPA on the applicability of *inter partes* reexamination. It is brought to petitioner's attention that the Constitution grants Congress the authority to legislate on the subject of patents; it does not provide that there be must a patent office (or a United States Patent and Trademark Office), much less vest the Office with any inherent authority to act or correct its acts. Thus, whatever authority the Office possesses to examine applications, grant patents, or reexamine previously granted patents must be found in the Office's enabling legislation (title 35 U.S.C.). Put simply, the Constitution does not provide the Office with the inherent authority to correct its "mistakes;" rather the Office's authority to correct such "mistakes" is limited to that authority provided to it in title 35, U.S.C. (i.e., 35 U.S.C. chapters 25, 30, and 31). It is further noted that the Federal courts have generally held that the power of Congress to legislate on the subject of patents is plenary by the terms of the Constitution. *See e.g., McClurg v. Kingsland*, 42 U.S. (1 How.) 202, 206 (1843); *see also Owen v. Heimann*, 12 F.2d 173, 174 (D.C. Cir.), cert. denied, 271 U.S. 685 (1926) ("Congress has full power to prescribe to whom and upon what terms and conditions a patent shall issue"); *Kling v. Haring*, 11 F.2d 202, 204-05 (D.C. Cir.), *cert. denied*, 271 U.S. 671 (1926) (same). In any event, administrative agencies do not have the authority to declare unconstitutional the laws they are charged with administering. *See, e.g., Oestereich v. Selective Service Board*, 393 U.S. 233, 242 (1968); *McGowan v. Marshall*, 604 F.2d 885, 892 (5th Cir. 1979); and *Buckeye Industries, Inc. v. Secretary of Labor*, 587 F.2d 231 (5th Cir. 1979).

5. At pages 5-7 of the petition, it is argued that the Section 4608 *inter partes* reexamination effective date provision of the AIPA has been repealed by implication, based upon the legislative expansion of third party requester appeal rights provided by Public Law 107-273. [5] At page 6 of the petition, sections 13106 and 13202 of Public Law 107-273 [6] are relied upon to show that the "broad scope of the right to appeal appears to repeal by implication" the Section 4608 effective date provision.

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[5] The 21st Century Department of Justice Appropriations Authorization Act, enacted on November 2, 2002. *See* Pub. L. 107-273, 116 Stat. 1758, 1899-1906 (2002)

[6] TITLE III- INTELLECTUAL PROPERTY, Subtitle A - the "Patent and Trademark Office Authorization Act of 2002."

In response, Congress is well versed in the mechanism for changing an effective date of prior legislation (as it did in Public Law 107-273 for the eighteen-month publication provisions of the AIPA), and Congress did not do so for the *inter partes* reexamination effective date provisions of the AIPA. It is to be noted that a provision for revision of the *inter partes* reexamination eligibility effective date was explicitly placed before Congress by way of Section 3(a) of H.R. 2231 introduced on June 19, 2001 and referred to the House committee. *See* H.R. 2231, 107th Cong., 1st Sess. (2001). This explicit provision to revise the *inter partes* reexamination eligibility effective date was before Congress; yet, it was *not carried forward* into Public Law 107-273.

As to sections 13106 and 13202 of Public Law 107-273 that are relied upon by petitioner:

Section 13106 of P.L. 107-273 is directed solely to *appeals* in *inter partes* reexamination and expands third party requester rights of appeal in an *inter partes* reexamination proceeding. Section 13202 is directed solely to *appeals* in *ex parte* reexamination and makes statutory technical corrections with respect to same. Neither of Sections 13106 and 13202, nor any other provision of P.L. 107-273, is directed to expanding the pool of patents eligible for *inter partes* reexamination.

THE ULTIMATE HOLDING OF THE DIRECTOR OF OPLA IN THE PROCEEDING

In this instance, the Director of the OPLA found that the instant patent is not statutorily eligible for *inter partes* reexamination, and accordingly, the deposited request papers would be returned to the requester. In the present decision, based upon a plenary review of the record, it has been determined that an *inter partes* reexamination for the present patent is barred by statute, for the reasons set forth above. Accordingly, there is no reversible error and no basis for disturbing the OPLA Director's decisions of June 6, 2003, and June 12, 2003, to return the *inter partes* reexamination request papers. Thus, the present petition is **denied** as to the petition to reverse the decision of the OPLA Director.

WAIVER OF THE RULES TO PERMIT REQUESTOR PARTICIPATION IN *EX PARTE* REEXAMINATION PROCEEDING

As pointed out above the requester filed, on June 24, 2003, a request for ***ex parte*** reexamination of the instant patent (under 35 U.S.C. 302). Beginning at page 8 of the present petition, a discussion is provided as to why requester should be granted a waiver of 37 CFR §§ 1.535, 1.550(g) and 1.560 to permit requestor to participate in the *ex parte* reexamination proceeding that would be conducted, if that reexamination request is granted.[7] This discussion as to the question of waiver is being addressed in a concurrently issued decision on requester's July 31, 2003, petition under 37 CFR 1.183 requesting waiver of 37 CFR §§ 1.535, 1.550(g) and 1.560.[8] Accordingly, the matter is not further addressed herein.

RETURN OF THE REQUEST PAPERS

In the OPLA Director's supplemental decision of June 12, 2003, it was stated that the request for *inter partes* reexamination of the present patent deposited April 17, 2003, was returned to the requester with the petition decision of June 6, 2003, and a refund of the $8,800 reexamination filing fee.[9] It was further stated that the boxes of reference copies were not returned, and such boxes were being temporarily stored in the Central Reexamination Unit (CRU), and the third party requester was given one month to make arrangements to pick up such boxes from the CRU.

At page 13 of the petition, however, it is pointed out that:

> "[a]lthough the decisions of May 6, 2003 stated that the Requests for Inter Partes Reexamination were returned with the decisions, in fact, no such Requests were received with the decisions. Accordingly, Petitioners respectfully request that the above-identified Request for Inter Partes Reexamination continue to be retained by the PTO pending a decision on this Petition."

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[7] Reexamination was subsequently ordered for the proceeding.

[8] That petition seeks to permit third party requester participation in the examination stage of the *ex parte* reexamination proceeding.

[9] The refund was effected by return of the check that was submitted with the request and marked void.

A review of the patent file and the boxes reveals that the original request papers were indeed not returned to the requester. Accordingly, the request papers deposited April 17, 2003, are being returned to the requester with this decision.

It is noted that petitioner requested [10] that the request papers deposited April 17, 2003, "continue to be retained by the PTO pending a final decision on all issues raised by this Petition." The instant decision is such a final decision, as set forth below.

LACK OF SERVICE

The requisite proof of service on the patent owner (a Certificate of Service) was not included with the instant petition papers. Pursuant to 37 CFR 1.903:

> "... any document filed by either the patent owner or the third party requester must be served on every other party in the reexamination proceeding in the manner provided in § 1.248. Any document must reflect service or the document may be refused consideration by the Office. The failure of the patent owner or the third party requester to serve documents may result in their being refused consideration."

Accordingly, the requester's petition is deficient for failure to reflect service of the response on the patent owner in accordance with 37 CFR 1.903.

Since the requisite proof of service on patent owner has not been included, a copy of the petition is being provided to the patent owner with this decision.

CONCLUSION

1. The present petition under 37 CFR 1.181(a)(3) is **granted** to the extent that the June 6, 2003, and June 12, 2003, decisions of the Director of the OPLA have been reviewed, but is **denied** as to overturning the decision by the Director of the OPLA.

2. The petition and this decision will be made of record in the patent file.

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[10] Petition at page 14.

3. A copy of the petition is being sent to the patent owner, along with this decision.

4. The request papers deposited April 17, 2003, are being returned to the requester with this decision.

5. No further reconsideration or review of this matter will be undertaken by way of petition.

6. This decision may be viewed as a **final agency action** within the meaning of 5 U.S.C. 704, for purposes of seeking judicial review. See MPEP 1002.02.

7. Telephone inquiries with regard to this decision should be directed to Kenneth M. Schor, Senior Legal Advisor, Office of Patent Legal Administration, at 703-308-6710.

Stephen G. Kunin
Deputy Commissioner for
Patent Examination Policy

November 12, 2003
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PTO/SB/66 (03-09)
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U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE
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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)
5670250	1997-09-23	08/442,119	1995-05-16	

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

	Fee	Code
◯	3 ½ year	(1551)
◯	7 ½ year	(1552)
◉	11 ½ year	(1553)

Small Entity

	Fee	Code
◯	3 ½ year	(2551)
◯	7 ½ year	(2552)
◯	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

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	/A. Blair Hughes/	Date (YYYY-MM-DD)	2010-02-09
Name	A. Blair Hughes	Registration Number	32901

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

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

In re Patent No. 5670250
Issue Date: September 23,1997
Application No. 08442119
Filed: May 16,1995
Attorney Docket No. 005-587-400

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed February 9,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 February 9,2010 . 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

COMMISSIONER FOR PATENTS
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**OFFICE OF PETITIONS
A/C PATENTS**

In re Application of :
John C. Harvey et al. :
Application No. 08/442,383 :
Filed: May 16, 1995 :
Attorney Docket No. 05634.0074 :

NOTICE

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**.

Inquiries related to this communication should be directed to the Office of Petitions Staff at (703) 305-9285.

This file is being forwarded to Technology Center 2600.

Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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
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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)
5720881	1998-02-24	08443381	1995-05-17	16864-79288

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

	Fee	Code
○	3 ½ year	(1551)
○	7 ½ year	(1552)
○	11 ½ year	(1553)

Small Entity

	Fee	Code
○	3 ½ year	(2551)
○	7 ½ year	(2552)
◉	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

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	/Jason P. Mueller/	Date (YYYY-MM-DD)	2010-03-31
Name	Jason P. Mueller	Registration Number	58603

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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Paper No. 25

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Enclosure: Copy of Requester Petition filed May 6, 2003

MAILED
JUN 0 6 2003
REEXAM UNIT

David L. Stewart (For Requester)
ALLEN DYER DOPPELT MILBRATH
& GILCHRIST, P.A.
Suite 1401
Orlando, FL 32802

Enclosures: Request papers deposited December 26, 2002

In re Campana, Jr. et al.	:	
Request For Reexamination Proceeding	:	DECISION
For: U.S. Patent No. 5,625,670	:	DENYING
Deposited[1]: April 17, 2003	:	PETITION
	:	

This is a decision on the May 6, 2003, third party requestor petition under 37 CFR 1.181 for(1) withdrawal of the notice of April 22, 2003,[2] as improper since jurisdiction is proper, (2) waiver of 37 CFR 1.535(g) and 1.560 to thus permit requestor to participate in a reexamination under 35 U.S.C. 301-307, (3) an order of a Director Initiated Reexamination under 35 U.S.C. 313, and (4) deferral of the effective date for an election required by the April 22, 2003, Notice. The petition is before the Director of the Office of Patent Legal Administration for decision.

[1] The request papers are stated as having been "deposited," as opposed to "filed," since no filing date has been assigned to the papers.

[2] The April 22, 2003, notice informed requester that the present patent for which *inter partes* reexamination was requested was not eligible for *inter partes* reexamination pursuant to Section 4608 of the American Inventor's Protection Act.

For the reasons set forth below, the petition is denied. In addition, the request papers are being returned to the requester, and the reexamination filing fee submitted with the request papers will be refunded to requester.

REVIEW OF FACTS

1. U.S. Patent No. 5,625,670 (hereinafter, the '670 patent), issued to Campana, Jr. et al., on April 27, 1997, from an application filed on May 18, 1995.

2. On December 26, 2002, reexamination was ordered for five of patent owner's patents. The order for reexamination was issued at the initiative of the Director of the United States Patent and Trademark Office under 37 CFR 1.520. The patents and their assigned control number are: 5,625,670 (90/006,491); 5,631,946 (90/006,492); 5,819,172 (90/006,493); 6,067,451 (90/006,494); and 6,317,592 (90/006,495).

3. The 90/006,491 reexamination proceeding, for the present '670 patent, is pending before the Office, and the Office records do not indicate that a first Office action has issued at this point in time.

4. On April 17, 2003, the present request for *inter partes* reexamination was deposited in the Office by the third party requester.

5. On April 22, 2003, a notice was issued informing requester that the present patent for which *inter partes* reexamination was requested was not eligible for *inter partes* reexamination (pursuant to Section 4608 of the American Inventor's Protection Act). The notice set a two week period for requester to elect to replace the *inter partes* request for reexamination with an *ex parte* request for reexamination under 37 CFR 1.510, pointing out that if such an election was not received within the two week period, the request papers would be returned to requester.

6. On May 6, 2003, requester filed the instant petition requesting (1) withdrawal of the notice as improper, (2) waiver of 37 CFR 1.535(g) and 1.560 to permit requestor participation in a reexamination under 35 U.S.C. 301-307, (3) a Director Initiated Reexamination under 35 U.S.C. 313, and (4) deferral of the effective date for an election required by the notice.

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DECISION

The petition sets forth, at page 1, a request for four types of relief using the conjunction "and" which would appear to indicate that all four types of relief are requested together (i.e., additive grounds). It is, however, clear from the remainder of the petition that the four types of relief requested by petitioner are alternative grounds of relief, and each will be addressed below, in turn, to the extent appropriate.

I. "[W]ithdrawal of the notice of April 22, 2003 as improper since jurisdiction is proper."

The reexamination statute was amended on November 29, 1999, by the 1999 American Inventors Protection Act (AIPA), Public Law 106-113, to expand reexamination by providing an "*inter partes*" option. [3] Section 4608 (effective date) of the AIPA provides:

> "(a) In General. – ... this subtitle and the amendments made by this subtitle shall take effect on the date of the enactment of this Act [November 29, 1999] and shall apply to any patent that issues from an original application filed in the United States on or after that date [November 29, 1999]." [emphasis added]

As was pointed out in the April 22, 2003, notice, the application for the patent for which the present reexamination was requested was filed prior to November 29, 1999 (the date of enactment of the AIPA), and, accordingly, the instant patent is not eligible for *inter partes* reexamination.

At pages 4-7 of the present petition, legislative history is presented and discussed with respect to circumstances surrounding the providing of *inter partes* reexamination in the enactment of the AIPA. These circumstances do not change the fact that the legislation was enacted by Congress, and it was signed into law by the President of the United States of America. In addition, while legislative history is useful in interpreting statutory language where the language of the statute is open to interpretation, in the present instance, the plain language of

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[3] See Title IV, subtitle F (§§ 4601 through 4608) of the "Intellectual Property and Communications Omnibus Reform Act of 1999," S. 1948 (106th Cong. 1st Sess. (1999)) - Enacted as part of Pub. L. 106-113, 113 Stat. 1501, 1501A-552 through 1501A-591 (1999).

the statute is clear and not ambiguous. The enacted "subtitle and the amendments" made thereby are clearly stated (in Section 4608) to apply "to any patent that issues from an original application filed in the United States on or after" the date of enactment (November 29, 1999). The application for the patent for which the present reexamination was requested was filed prior to that date, and thus is not eligible for *inter partes* reexamination, pursuant to the *clear language* of the statute.

At page 2 of the petition, it is argued that Congress reconsidered Section 4608 of the AIPA, and repealed it "by implication" by way of "at least sections 13106 and 13202 of Public Law 107-273 [4] "[Footnote for the enactment added].

In response, note that Section 13106 of P.L. 107-273 is directed solely to *appeals* in *inter partes* reexamination and expands third party requester rights of appeal in an *inter partes* reexamination proceeding. Further, Section 13202 is directed solely to *appeals* in *ex parte* reexamination and makes statutory technical corrections with respect to same. Neither of Sections 13106 and 13202, nor any other provision of P.L. 107-273, is directed to expanding the eligibility of the pool of patents eligible for *inter partes* reexamination.

Petitioner asserts in the petition that Congress passed the AIPA legislation in haste and did not "substantively consider Section 4608." At page 7 of the petition, applicant states:

> "[W]hen the Justice Department Reauthorization Act was considered, since 4608 was not part of Title 35, it is not likely that Congress was anymore aware at the time of the passage in the Justice Department Reauthorization Act, that there were any limitations on the Inter Partes Reexamination practice by virtue of the date on which a patent issued. As a result, Congress granted, in sections 13106 and 13201 of the Justice Department Reauthorization Act a plenary right of appeal to any third party Inter Partes Reexamination requestor apparently under the assumption that participation rights were a given."

With respect to this point, it is to be noted that Congress had ample time to consider and reconsider Section 4608 of the AIPA, before passing H.R. 2215 (the underlying legislation incorporated as part of Title III, Subtitle A (Patent and Trademark Office) of

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[4] See the 21st Century Department of Justice Appropriations Authorization Act, TITLE III- INTELLECTUAL PROPERTY, Subtitle A - the "Patent and Trademark Office Authorization Act of 2002" - Enacted as part of Pub. L. 107-273, 116 Stat. 1758, 1899-1906 (2002).

Public Law 107-273), and its precursor bills. Yet H.R. 2215 did not revise the *inter partes* reexamination eligibility provision, while it did, at the same time, revise other reexamination effective date provisions. This shows a clear intent on the part of Congress to retain the *inter partes* reexamination eligibility provision of Section 4608 of the AIPA as-is, i.e., as it was enacted.

It is further to be noted that revision the *inter partes* reexamination eligibility provision was explicitly placed before Congress by way of Section 3(a) of H.R. 2231 introduced by Congressman Lofgren on June 19, 2001, [5] and referred to the House committee.[6] Yet it was not carried forward in H.R. 2215 which was incorporated into Public Law 107-273. Congress could have chosen to carry forward the substance of Section 3(a) of H.R. 2231, but declined to do so.

In view of the above, the April 22, 2003, notice, is deemed proper, and it will not be withdrawn. The first item of relief requested is accordingly denied.

II. "[W]aiver of 37 C.F.R 1.535(g) and 1.560 to permit Requestor to participate in Reexamination under 35 U.S.C. 301-307."

At pages 9-10 of the petition, requester urges that, if it elects to convert the request deposited April 17, 2003, to a request for *ex parte* reexamination, 37 CFR 1.535 and 1.560 should be waived pursuant to 37 CFR 1.183 to permit requester to participate in the reexamination proceeding. At page 15 of the petition, it is requested that *ex parte* reexamination procedure be "expanded by waver of 37 C.F.R 1.535 and 1.560." This is in effect a petition under 37 CFR 1.183 for waiver of the rules (though it was submitted as a "request").

37 CFR 1.4(c) provides that "each distinct subject, inquiry or order must be contained in a separate paper to avoid confusion and delay in answering papers dealing with different subjects." [Emphasis added]

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[5] 107th CONGRESS, 1st Session

[6] This bill was co-sponsored by Congressman Coble, who introduced the H.R. 1886 *inter partes* reexamination appeal provision which ultimately became Section 13106 of P.L. 107-273 which petitioner advances at page 2 of the petition.

The present request for a waiver of the rules is a distinct "subject" and/or "inquiry," and should have been provided in the form of a separate petition paper under 37 CFR 1.183, accompanied by the petition fee set forth in 37 CFR 1.17(h). Petitioner did not provide the separate petition paper, and did not provide the required petition fee. Accordingly, the issue is not ripe for a decision, and will not be decided herein.

It is, however, pointed out to petitioner that relief by way of a waiver of the rules cannot be provided in this instance, because third party requester participation in an *ex parte* reexamination is barred by statute, and the statute cannot be waived. Neither the rules nor any provision of the statute provide authority for a third party requester of a reexamination proceeding requested under 35 U.S.C. 302 to file a paper directed to the issues of the reexamination proceeding. *In re Amp*, 212 USPQ 826 (Comr. Pats. 1981). The statute and its intent are clear that a reexamination proceeding requested under 35 U.S.C. 302 must be *ex parte*. *Syntex (U.S.A.) Inc. v. U.S. Patent and Trademark Office*, 11 USPQ2d 1866, 1869 (Fed. Cir. 1989) (third parties do not participate before the USPTO).

III. "[T]hat the Patent and Trademark Office order a Director Initiated Reexamination under 35 U.S.C. 313."

At page 15 of the petition, it is stated:

> "If neither of the previous requests for relief a granted, Requestor specifically requests that the Director of the Patent and Trademark Office initiate Inter Partes Reexamination under 35 U.S.C. 313 and allow Requestor to participate."

The present request for a Director Initiated Reexamination must be made via a petition under 37 CFR 1.182, since it is for "a question not specifically provided for." While 37 CFR 1.520 provides that the Director may order a reexamination at his initiative, even where a reexamination has not been requested under 37 CFR 1.510 or 1.913, 37 CFR 1.520 does not provide for a member of the public to request that the Director order reexamination at his own initiative. Further, 37 CFR 1.520 does not provide for a Director Initiated ***Inter Partes*** Reexamination, and there is no 1.900-series rule that does so. Thus, the present request for a Director Initiated Reexamination is clearly for relief "not specifically provided for in the regulations of this part," and such a request must be made via a petition under 37 CFR 1.182.

As noted above, 37 CFR 1.4(c) provides that each distinct subject, inquiry or order must be contained in a separate paper. The present request for a Director Initiated Reexamination is a distinct "subject" and/or "inquiry," and it should have been provided in the form of a separate petition paper under 37 CFR 1.182, accompanied by the petition fee set forth in 37 CFR 1.17(h). Petitioner did not provide the separate petition paper, and did not provide the required petition fee. Accordingly, the issue is not ripe for a decision, and will not be decided herein.

It is, however, pointed out to petitioner that relief by way of a Director Initiated ***Inter Partes*** Reexamination is not statutorily available to requester. The reference to a Director Initiated Reexamination in 35 U.S.C. 312(a) was explicitly deleted in a technical correction made by Section 13202(a)(2) of Public Law 107-273 (the 21st Century Department of Justice Appropriations Authorization Act, enacted November 2, 2002).[7]

Accordingly, the reference to "section 312(a)" made in 35 U.S.C. 313 does not include a Director Initiated Reexamination for *inter partes* reexamination.

IV. "[D]eferral of the effective date for an election required by the Notice."

At page 15 of the petition, it is stated:

> "The Patents Special Projects Advisor indicated that Requestor must elect whether to pursue Inter Partes Reexamination or elect to convert the Inter Partes Request to an Ex Parte Request by the due date. Since that election cannot be reasonably be made without knowing the outcome of Patent and Trademark Office consideration of his petition and since Requestor has made a contingent election, Requestor requests that the requirement of the Patents Special Projects Advisor be held in abeyance until decision on this Petition is received by Requestor."

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[7] The revision made to 35 U.S.C. 312(a) by P.L. 107-273 is shown as follows in strike-out/underline format:

REEXAMINATION.— Not later than 3 months after the filing of a request for inter partes reexamination under section 311, the Director shall determine whether a substantial new question of patentability affecting any claim of the patent concerned is raised by the request, with or without consideration of other patents or printed publications. ~~On the Director's initiative, and at any time, the Director may determine whether a substantial new question of patentability is raised by patents and publications.~~ The existence of a substantial new question of patentability is not precluded by the fact that a patent or printed publication was previously cited by or to the Office or considered by the Office.

The request for a deferral of the effective date for the election required by the Notice must be made via a petition under 37 CFR 1.182, since it is for "a question not specifically provided for." Once again, petitioner has not provided a separate petition paper, nor the required petition fee. Accordingly, the issue is not ripe for a decision. The following is however pointed out to petitioner:

The third party requester has the option to initiate an *ex parte* reexamination of the instant patent by filing a new request for *ex parte* reexamination. Such a filing would not prejudice requestor, as compared to having the present reexamination papers converted at a future time as is requested in the petition. Requester would not be prejudiced because there is no negative consequence that would result from having a later filing date for a reexamination proceeding. Further, the filing fee that accompanied the present request papers is being returned in its entirety, so, requester does not lose any filing fee applied. Thus, the relief requested by petitioner could be obtained via a different avenue, and there would be no ground for granting a petition under 37 CFR 1.182, even if such had been properly filed.

RETURN OF PAPERS

The notice to requester of April 22, 2003 stated, as its last paragraph:

> "The *inter partes* reexamination 'request' papers are being temporarily held in the CRU pending a decision as to whether or not requester wants to replace the *inter partes* request for reexamination with an ex parte request for reexamination under 37 CFR 1.510. **If such decision is NOT received within two (2) weeks from the mailing date of this letter, the request papers will be returned to the requester.**"

The instant petition was filed within the two week period; however, an election was not made in the petition.

At page 9 of the petition, a "Conditional Election" is stated as follows:

> "...if the Inter Partes Request for Reexamination of eight NTP patents is not granted, applicants elect to convert those Inter Partes Reexamination requests to ex parte requests, provided that the provisions of 37 C.F.R. 1.535 (g) and 1.560 are waived to permit requestor participation." [Emphasis added]

A waiver of 37 CFR 1.535(g) and 1.560 has not been granted in this decision; thus, the stated conditional election does not take effect.

In addition, the requested deferral of the effective date for an election required by the April 22, 2003, Notice has not been granted. Accordingly, the request papers are being **returned** with this decision.

The petition, and the present decision on the petition will be made of record in the patent file.

LACK OF SERVICE

The requisite proof of service (a Certificate of Service) on the patent owner was not included with the instant petition papers. Pursuant to 37 CFR 1.903

> "... any document filed by either the patent owner or the third party requester must be served on every other party in the reexamination proceeding in the manner provided in § 1.248. Any document must reflect service or the document may be refused consideration by the Office. The failure of the patent owner or the third party requester to serve documents may result in their being refused consideration."

Accordingly, the requester's petition is deficient for failure to reflect service of the response on the patent owner in accordance with 37 CFR 1.903.

Since the requisite proof of service on patent owner has not been included, a copy of the petition is being provided to the patent owner with this decision.

REFUND OF REEXAMINATION FILING FEE

The present deposit of an *inter partes* reexamination was made in error for the reasons set forth above. Pursuant to 35 U.S.C. § 42(d), "[t]he Director may refund any fee paid by mistake...." Accordingly, **a refund** of the $8,800 reexamination filing fee will be made to requester in due course by return of the check that was submitted with the request.

THIRD PARTY REQUESTER'S RECOURSE

In the event that the third party requester desires to initiate an *ex parte* reexamination of the instant patent, requester may wish to consider filing a new request for *ex parte* reexamination. Such a filing should include a specific identification of each substantial new question of patentability based on the cited patents and printed publications, as well as a detailed explanation of the pertinency and manner of applying the patents and publications to every claim for which reexamination is requested.

CONCLUSION

1. The third party requestor petition filed May 6, 2003, pursuant to 37 CFR 1.181, is denied.

2. The request papers deposited April 17, 2003, are being returned to the requester with this decision.

3. The requestor petition filed May 6, 2003, and this decision will be made of record in the patent file.

4. A refund of the $8,800 reexamination filing fee will be made to requester by return of the check that was submitted with the request papers.

5. A copy of the requester petition filed May 6, 2003, is being sent to the patent owner, along with this decision.

6. Telephone inquiries with regard to this decision should be directed to Kenneth M. Schor, Senior Legal Advisor, at 703-308-6710.

Robert J. Spar
Director
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

June 3, 2003
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UNITED STATES PATENT AND TRADEMARK OFFICE

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MAILED

JUN 12 2003

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(For Requester)

In re Campana, Jr. et al.
Request for *Inter Partes* Reexamination Proceeding
For: U.S. Patent No. 5,625,670
Deposited[1]: April 17, 2003

: **SUPPLEMENTAL**
: **DECISION**
: **DENYING**
: **PETITION**

This is a supplemental decision to the decision mailed on June 6, 2003, on the third party requester's petition of May 6, 2003. The June 6, 2003, decision denied the third party requester petition under 37 C.F.R. § 1.181 for (1) withdrawal of the notice of April 22, 2003,[2] as improper

[1] The request papers are stated as having been "deposited, " as opposed to "filed," since no filing date has been assigned to the papers.

[2] The April 22, 2003, notice informed requester that the present patent for which *inter partes* reexamination was requested was not eligible for *inter partes* reexamination pursuant to Section 4608 of the American Inventor's Protection Act.

since jurisdiction is proper, (2) waiver of 37 C.F.R. § 1.535(g) and § 1.560 to thus permit requester to participate in a reexamination under 35 U.S.C. 301-307, (3) an order of a Director Initiated Reexamination under 35 U.S.C. 313, and (4) deferral of the effective date for an election required by the Notice of April 22, 2003. This matter is before the Director of the Office of Patent Legal Administration for clarification.

For the reasons set forth in the decision of June 6, 2003, the petition was denied. In addition, the decision stated that the "request papers" and the reexamination filing fee submitted with the request papers were returned to the requester. This supplemental decision clarifies what was returned as the "request papers."

REVIEW OF FACTS

1. U.S. Patent No. 5,625,670 (hereinafter, the '670 patent), issued to Campana, Jr. et al., on April 29, 1997, from an application filed on May 18, 1995.

2. On April 17, 2003, a request for *inter partes* reexamination was deposited in the Office by the third party requester. The deposited request comprised "request papers" which include a statement that reexamination is requested, a table of contents (of the prior art references), a reference to the filing fee, and a copy of the '670 patent. In addition, the request included two boxes containing the copies of the references cited in the request, as well as claim charts interspersed therewith.

3. A notice was mailed on April 22, 2003, informing requester that the present patent for which *inter partes* reexamination was requested is **not eligible** for *inter partes* reexamination (pursuant to Section 4608 of the American Inventor's Protection Act). The notice set a two week period for requester to elect to replace the *inter partes* request for reexamination with an *ex parte* request for reexamination under 37 C.F.R. § 1.510, pointing out that if such an election was not received within the two week period, the request papers would be returned to requester.

4. On May 6, 2003, requester filed a petition requesting (1) withdrawal of the notice as improper, (2) waiver of 37 C.F.R. § 1.535(g) and § 1.560 to permit requester participation in a reexamination under 35 U.S.C. 301-307, (3) a Director Initiated Reexamination under 35 U.S.C. 313, and (4) deferral of the effective date for an election required by the notice.

5. A decision denying the petition was mailed on June 6, 2003[3].

[3] The address portion of the decision of June 6, 2003, inadvertently indicated that the enclosures sent to requester were request papers deposited December 26, 2002. The body of the decision, however, correctly states in the Conclusion on page 10 that the request papers being returned to requester were deposited on April 17, 2003.

CLARIFICATION RE: RETURN OF PAPERS

The Notice to requester mailed on April 22, 2003, stated in its' last paragraph:

> "The *inter partes* reexamination 'request' papers are being temporarily held in the CRU pending a decision as to whether or not requester wants to replace the *inter partes* request for reexamination with an *ex parte* request for reexamination under 37 C.F.R. § 1.510. **If such decision is NOT received within two (2) weeks from the mailing date of this letter, the request papers will be returned to the requester.**"

The petition of May 6, 2003, was filed within the two week period, however, an election was not made in the petition. In addition, the requested deferral of the effective date for an election required by the Notice of April 22, 2003, was not granted. Accordingly, the reexamination request was returned with the decision mailed June 6, 2003.

This supplemental decision clarifies that only the "request papers" were in fact returned with the June 6, 2003, decision; the boxes containing *inter alia* the references were not returned. The request papers which were returned include a statement that reexamination is requested, a table of contents (of the prior art references), a reference made as to the filing fee, and a copy of the '670 patent. The two boxes containing the copies of references cited in the request, as well as the claim chart interspersed therewith, were **not** returned **due to their voluminous nature.**

The boxes of reference copies which accompanied the request for *inter partes* reexamination are being temporarily held in the Central Reexamination Unit (CRU). If the third party requester desires a return of the boxes, then requester should promptly make arrangements to pick up such boxes from the CRU **within one month** of the mailing date of this supplemental decision. Requester should immediately notify Marsha Twitty of the CRU, at telephone number (703) 308-9692, of any arrangements that have been made to pick up such boxes. If the boxes are **not** picked up **within one month** of the mailing date of this supplemental decision, **the CRU may dispose of such boxes.**

The petition, the previous petition decision and the present supplemental decision denying the petition will be made of record in the patent file.

THIRD PARTY REQUESTER'S RECOURSE

As indicated in the previous petition decision, in the event that the third party requester desires to initiate an *ex parte* reexamination of the instant patent, requester may wish to consider filing a new request for *ex parte* reexamination pursuant to 37 C.F.R. § 1.510.

In this regard, note that the **mailing address** for the U.S. Patent & Trademark Office has **changed, as of May 1, 2003.**

All new **requests for an *ex parte* reexamination proceeding** should be directed:

by Mail to: Mail Stop *Ex Parte* Reexam
Central Reexamination Unit
Office of Patent Legal Administration
United States Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

All correspondence relating to an *inter partes* reexamination proceeding (a new request may not be submitted by FAX) should be directed:

by Mail to: Mail Stop *Inter Partes* Reexam
Central Reexamination Unit
Office of Patent Legal Administration
United States Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

by FAX to: (703) 305-1013
Central Reexamination Unit

By hand: Central Reexamination Unit
Crystal Plaza Three-Four, 3D68
2201 South Clark Place
Arlington, VA 22202

Electronic Acknowledgement Receipt

CONCLUSION

1. The third party requester petition filed May 6, 2003, pursuant to 37 C.F.R. § 1.181, was denied in a decision mailed on June 6, 2003, and the present decision is supplemental to that decision.

2. The request for *inter partes* reexamination deposited April 17, 2003, was returned to the requester with the petition decision of June 6, 2003. The return of the request included a refund of the $8,800 reexamination filing fee by return of the check that was submitted with the request and marked void.

3. The boxes of reference copies (including the claim chart interspersed with the reference copies) were not returned with the decision mailed on June 6, 2003, and the boxes are being temporarily stored in the CRU.

4. If the third party requester desires a return of the boxes, then requester should promptly make arrangements to pick up such boxes from the CRU **within one month** of the mailing date of this supplemental decision.

5. If the boxes are **not** picked up **within one month** of the mailing date of this supplemental decision, then the CRU **may dispose of such boxes**.

6. This decision will be made of record in the patent file, to accompany the petition and the June 6, 2003, decision.

7. Telephone inquiries with regard to this decision should be directed to Lynn M. Kryza, Patent Special Projects Advisor, at (703) 308-0255 or Kenneth Schor, Senior Legal Advisor, at (703) 308-6710. Telephone inquiries with regard to making arrangements for picking up the boxes of references presently stored in the CRU should be directed to Marsha Twitty at (703) 308-9692.

6/17/03

Robert J. Spar
Director
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

Decision Mailed

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

Paper No. 28

Donald E. Stout (For Patent Owner)
Antonelli, Terry, Stout & Kraus
Suite 1800
1300 N. 17th Street
Arlington, VA 22209

Enclosure: Copy of Requester Petition filed July 31, 2003

MAILED
NOV 25 2003
REEXAM UNIT

David L. Stewart (For Requester)
ALLEN DYER DOPPELT MILBRATH
& GILCHRIST, P.A.
Suite 1401
Orlando, FL 32802

Enclosure: Reexamination request papers deposited April 17, 2003

In re Campana, Jr. et al.	:	
Request For Reexamination Proceeding	:	DECISION
For: U.S. Patent No. 5,625,670	:	DENYING
Deposited[1]: April 17, 2003	:	PETITION
	:	

This is a decision on the July 31, 2003, third party requestor petition titled "Petition to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, in Person, from a Decision of the Director of the Office of Patent Legal Administration under 37 C.F.R. § 1.181."

The petition is **granted** to the extent that the June 6, 2003, and June 12, 2003, decisions of the Director of the Office of Patent Legal Administration (OPLA) have been reviewed by a higher level official within the United States Patent and Trademark Office (Office), but is **denied** as to overturning the decision by the Director of OPLA.

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[1] The request papers are stated as having been "deposited," as opposed to "filed," since no filing date has been assigned to the papers.

REVIEW OF FACTS

1. U.S. Patent No. 5,625,670 (hereinafter, the '670 patent), issued to Campana, Jr. et al., on April 27, 1997, from an application filed on May 18, 1995.

2. On December 26, 2002, reexamination was ordered for five of patent owner's patents. The order for reexamination was issued at the initiative of the Director of the United States Patent and Trademark Office under 37 CFR 1.520. The patents and their assigned control number are: 5,625,670 (90/006,491); 5,631,946 (90/006,492); 5,819,172 (90/006,493); 6,067,451 (90/006,494); and 6,317,592 (90/006,495). The 90/006,491 reexamination proceeding, for the present '670 patent, is pending before the Office.

3. On April 17, 2003, the present request for *inter partes* reexamination was deposited in the Office by the third party requester.

4. On April 22, 2003, a notice was issued informing requester that the present patent for which *inter partes* reexamination was requested was not eligible for *inter partes* reexamination (pursuant to Section 4608 of the American Inventor's Protection Act). The notice set a two week period for requester to elect to replace the *inter partes* request for reexamination with an *ex parte* request for reexamination under 37 CFR 1.510, pointing out that if such an election was not received within the two week period, the request papers would be returned to requester.

5. On May 6, 2003, the requester filed a petition under 37 CFR 1.181, requesting (1) withdrawal of the notice as improper, (2) waiver of 37 CFR 1.535(g) and 1.560 to permit requestor participation in a reexamination under 35 U.S.C. 301-307, (3) a Director Initiated Reexamination under 35 U.S.C. 313, and (4) deferral of the effective date for an election required by the notice.

6. A decision of the Director of OPLA was mailed on June 6, 2003, and supplemented on June 12, 2003, in which the requestor petition under 37 CFR 1.181 filed May 6, 2003, was denied,[2] and for return of the deposited request papers to the requester.

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[2] Some of the issues raised in the May 6th petition were found not to be ripe for decision, and were not decided.

7. On June 24, 2003, the requester filed a request for an ***ex parte*** reexamination of the '670 patent, which was assigned control number 90/006,678.

8. On July 31, 2003, the requester filed the present petition under 37 CFR 1.181, for review of the decision of the Director of OPLA.

9. Also on July 31, 2003, the requester filed a petition under 37 CFR 1.183 requesting waiver of 37 CFR §§ 1.535, 1.550(g) and 1.560, to permit third party requester participation in the examination stage of the 90/006,678 *ex parte* reexamination proceeding.

REQUEST FOR PERSONAL REVIEW BY THE DIRECTOR

The petition is addressed to the Director of the United States Patent and Trademark Office (the Director). It is inappropriate and not feasible for the Director to personally review all papers requesting relief that are directed to him; such personal review is not a matter of right and lies within the sound discretion of the Director. *See Corrigan v. v. Alexeevsky, et al.*, 200 USPQ 368(Comr. Pat. 1978), *In re Staeger*, 189 USPQ 284 (Comr. Pat. 1974) The Director will not review a decision in person except in unusual or exceptional circumstances. *See Id.* In the present instance, the petition does not present unusual and exceptional circumstances that would justify the requested "In Person" review by the Director. Inasmuch as the authority for deciding petitions from a Decision of the Director of OPLA has been delegated to the Deputy Commissioner for Patent Examination Policy, the instant petition has been forwarded to the Deputy Commissioner for Patent Examination Policy for treatment as a petition under 37 CFR 1.181(a)(3) requesting review of the decision of the Director of OPLA by a higher level Office official.

DECISION

1. In his June 6, 2003, decision, the Director of OPLA found that the instant patent is not eligible for *inter partes* reexamination, and thus, the deposited papers requesting an *inter partes* reexamination of instant patent are to be returned to the requester. The present petition takes issue with, and seeks review of, that finding. As pointed out in the June 6th decision:

The reexamination statute was amended on November 29, 1999, by the 1999 American Inventors Protection Act (AIPA), Public Law 106-113, to expand reexamination by providing an "*inter partes*" option. [3] Section 4608 (effective date) of the AIPA provides:

> "(a) In General. – ... this subtitle and the amendments made by this subtitle shall take effect on the date of the enactment of this Act [November 29, 1999] and shall apply to any patent that issues from an original application filed in the United States on or after that date [November 29, 1999]." [emphasis added]

The application for the instant patent was filed prior to November 29, 1999 (the date of enactment of the AIPA), and, accordingly, the instant patent is not eligible for *inter partes* reexamination.

2. At page 4 of the petition, it is argued that:

> "the position taken in the decision(s) by the Director of the Office of Patent Legal Administration with respect to Section 4608 prohibits the PTO from declaring, in an Inter Partes proceeding, claims from a parent application to be unpatentable even though they are not patentably distinct from claims in a continuing application [filed on or after November 29, 1999]. In the Requests for Inter Partes Reexamination under consideration in this petition, the PTO has accepted Inter Partes Reexamination status for U.S. Patent No. 6,317,592, even though the claims of many of the above-identified applications are acknowledged as patentably not distinct by the filing of a Terminal Disclaimer."

In response, it is initially to be observed that while the claims from a parent application filed prior to November 29, 1999 cannot be declared "to be unpatentable" in an *inter partes* reexamination proceeding, petitioner is free to file a request for an *ex parte* reexamination proceeding (and has done so) in an effort to have such claims of the parent declared unpatentable. To the extent that petitioner is pointing out that it does not appear consistent to bar *inter partes* reexamination for a parent patent,

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[3] See Title IV, subtitle F (§§ 4601 through 4608) of the "Intellectual Property and Communications Omnibus Reform Act of 1999," S. 1948 (106th Cong. 1st Sess. (1999)) - Enacted as part of Pub. L. 106-113, 113 Stat. 1501, 1501A-552 through 1501A-591 (1999).

while such is permitted for a continuation having patentably indistinct claims, this is simply the result mandated by the effective date provision (section 4608) of the *inter partes* reexamination provisions of the AIPA. It is not within the authority of the Office to permit an *inter partes* reexamination for the instant patent, since the effective date provision (section 4608) of the *inter partes* reexamination provisions of the AIPA does not make the *inter partes* reexamination provisions of the AIPA applicable to a patent resulting from an application filed before November 29, 1999, simply because that patent contains one or more claims which are not patentably distinct from a patent resulting from an application filed on or after November 29, 1999, (and to which the *inter partes* reexamination provisions of the AIPA would apply).

3. At page 4 of the petition, it is pointed out that:

> "the position taken in the decision(s) by the Director of the Office of Patent Legal Administration with respect to Section 4608 effectively guts the applicability of Inter Partes Reexamination by limiting its applicability to only 3.9% of patents.... Given the legislative history, described somewhat below, it would require an extraordinary leap to assume that a majority of both houses of Congress intended Inter Partes Reexamination to apply to only 3.9% of issued patents."

As to the "legislative history," page 5 of the petition then presents comments directed to circumstances surrounding the providing of *inter partes* reexamination in the enactment of the AIPA, and as to the viability of using the *inter partes* reexamination process.

In addressing petitioner's argument of Congressional intent and legislative history, the following is to be noted:

Regardless of the circumstances of enactment and comments on viability of the enacted process, the legislation was enacted by Congress, and it was signed into law by the President of the United States of America. While legislative history may useful in interpreting statutory language where the language of the statute is open to interpretation, in the present instance, the plain language of the statute is clear and not ambiguous. The enacted "subtitle and the amendments" made thereby are clearly stated (in Section 4608) to apply "to any patent that issues from an original application filed in the United States on or after" the date of enactment (November 29, 1999). The application for the instant patent, for which the *inter partes* reexamination is

requested, was filed prior to that date; thus, the patent is not eligible for *inter partes* reexamination, pursuant to the *clear language* of the statute.

It is further noted that Congress had ample time to consider and reconsider Section 4608 of the AIPA, before passing H.R. 2215 (the underlying legislation incorporated as part of Title III, Subtitle A (Patent and Trademark Office) of Public Law 107-273), and its precursor bills. Yet H.R. 2215 did not revise the *inter partes* reexamination eligibility provision, while it did, at the same time, revise other reexamination effective date provisions. This shows a clear intent on the part of Congress to retain the *inter partes* reexamination eligibility provision of Section 4608 of the AIPA as-is, i.e., as it was enacted.

4. At pages 7-8 of the petition, a Constitutionality issue is raised. Petitioner argues that:

> "The Decision by the Director of the Office of Patent Legal Administration that the Patent and Trademark Office does not have authority under Section 4608 of the AIPA to accept the above-identified Requests for Inter Partes Reexamination is constitutionally questionable....Issuing a patent that is invalid based on prior art is an unconstitutional act because it gives exclusive rights to individuals who are not "inventors" in a Constitutional sense. Since issuing a patent that is invalid based on prior art is unconstitutional, the PTO has inherent authority to declare such issuance invalid and improper without the need for any authorizing legislation. Section 4608 may be unconstitutional to the extent it purports to limit an Executive Branch Agency (the PTO) in correcting its own unconstitutional acts."

Petitioner then[4] requests that the Office:

> "utilize its inherent Constitutional Authority to ignore 4608 and accept the above-described Requests for Inter Partes Reexamination. Petitioner respectfully requests that the PTO hold Section 4608 of the AIPA to be unconstitutional and accept the above-described Requests for Inter Partes Reexamination.

Petitioner appears to be arguing that the Section 4608 *inter partes* reexamination effective date provision is unwise and should not be adhered to, and that Article I, § 8, cl. 8 of the U.S. Constitution ("Congress shall have the power...[t]o promote the progress of science and useful arts, by securing for limited

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[4] Petition at page 8.

times to authors and inventors the exclusive right to their respective writings and discoveries") provides a basis for the Office to ignore the limitations in the AIPA on the applicability of *inter partes* reexamination. It is brought to petitioner's attention that the Constitution grants Congress the authority to legislate on the subject of patents; it does not provide that there be must a patent office (or a United States Patent and Trademark Office), much less vest the Office with any inherent authority to act or correct its acts. Thus, whatever authority the Office possesses to examine applications, grant patents, or reexamine previously granted patents must be found in the Office's enabling legislation (title 35 U.S.C.). Put simply, the Constitution does not provide the Office with the inherent authority to correct its "mistakes;" rather the Office's authority to correct such "mistakes" is limited to that authority provided to it in title 35, U.S.C. (i.e., 35 U.S.C. chapters 25, 30, and 31). It is further noted that the Federal courts have generally held that the power of Congress to legislate on the subject of patents is plenary by the terms of the Constitution. *See e.g., McClurg v. Kingsland*, 42 U.S. (1 How.) 202, 206 (1843); *see also Owen v. Heimann*, 12 F.2d 173, 174 (D.C. Cir.), cert. denied, 271 U.S. 685 (1926) ("Congress has full power to prescribe to whom and upon what terms and conditions a patent shall issue"); *Kling v. Haring*, 11 F.2d 202, 204-05 (D.C. Cir.), *cert. denied*, 271 U.S. 671 (1926) (same). In any event, administrative agencies do not have the authority to declare unconstitutional the laws they are charged with administering. *See, e.g., Oestereich v. Selective Service Board*, 393 U.S. 233, 242 (1968); *McGowan v. Marshall*, 604 F.2d 885, 892 (5th Cir. 1979); and *Buckeye Industries, Inc. v. Secretary of Labor*, 587 F.2d 231 (5th Cir. 1979).

5. At pages 5-7 of the petition, it is argued that the Section 4608 *inter partes* reexamination effective date provision of the AIPA has been repealed by implication, based upon the legislative expansion of third party requester appeal rights provided by Public Law 107-273. [5] At page 6 of the petition, sections 13106 and 13202 of Public Law 107-273 [6] are relied upon to show that the "broad scope of the right to appeal appears to repeal by implication" the Section 4608 effective date provision.

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[5] The 21st Century Department of Justice Appropriations Authorization Act, enacted on November 2, 2002. *See* Pub. L. 107-273, 116 Stat. 1758, 1899-1906 (2002)

[6] TITLE III- INTELLECTUAL PROPERTY, Subtitle A - the "Patent and Trademark Office Authorization Act of 2002."

In response, Congress is well versed in the mechanism for changing an effective date of prior legislation (as it did in Public Law 107-273 for the eighteen-month publication provisions of the AIPA), and Congress did not do so for the *inter partes* reexamination effective date provisions of the AIPA. It is to be noted that a provision for revision of the *inter partes* reexamination eligibility effective date was explicitly placed before Congress by way of Section 3(a) of H.R. 2231 introduced on June 19, 2001 and referred to the House committee. *See* H.R. 2231, 107th Cong., 1st Sess. (2001). This explicit provision to revise the *inter partes* reexamination eligibility effective date was before Congress; yet, it was *not carried forward* into Public Law 107-273.

As to sections 13106 and 13202 of Public Law 107-273 that are relied upon by petitioner:

Section 13106 of P.L. 107-273 is directed solely to *appeals* in *inter partes* reexamination and expands third party requester rights of appeal in an *inter partes* reexamination proceeding. Section 13202 is directed solely to *appeals* in *ex parte* reexamination and makes statutory technical corrections with respect to same. Neither of Sections 13106 and 13202, nor any other provision of P.L. 107-273, is directed to expanding the pool of patents eligible for *inter partes* reexamination.

THE ULTIMATE HOLDING OF THE DIRECTOR OF OPLA IN THE PROCEEDING

In this instance, the Director of the OPLA found that the instant patent is not statutorily eligible for *inter partes* reexamination, and accordingly, the deposited request papers would be returned to the requester. In the present decision, based upon a plenary review of the record, it has been determined that an *inter partes* reexamination for the present patent is barred by statute, for the reasons set forth above. Accordingly, there is no reversible error and no basis for disturbing the OPLA Director's decisions of June 6, 2003, and June 12, 2003, to return the *inter partes* reexamination request papers. Thus, the present petition is **denied** as to the petition to reverse the decision of the OPLA Director.

WAIVER OF THE RULES TO PERMIT REQUESTOR PARTICIPATION IN *EX PARTE* REEXAMINATION PROCEEDING

As pointed out above the requester filed, on June 24, 2003, a request for ***ex parte*** reexamination of the instant patent (under 35 U.S.C. 302). Beginning at page 8 of the present petition, a discussion is provided as to why requester should be granted a waiver of 37 CFR §§ 1.535, 1.550(g) and 1.560 to permit requestor to participate in the *ex parte* reexamination proceeding that would be conducted, if that reexamination request is granted.[7] This discussion as to the question of waiver is being addressed in a concurrently issued decision on requester's July 31, 2003, petition under 37 CFR 1.183 requesting waiver of 37 CFR §§ 1.535, 1.550(g) and 1.560.[8] Accordingly, the matter is not further addressed herein.

RETURN OF THE REQUEST PAPERS

In the OPLA Director's supplemental decision of June 12, 2003, it was stated that the request for *inter partes* reexamination of the present patent deposited April 17, 2003, was returned to the requester with the petition decision of June 6, 2003, and a refund of the $8,800 reexamination filing fee.[9] It was further stated that the boxes of reference copies were not returned, and such boxes were being temporarily stored in the Central Reexamination Unit (CRU), and the third party requester was given one month to make arrangements to pick up such boxes from the CRU.

At page 13 of the petition, however, it is pointed out that:

> "[a]lthough the decisions of May 6, 2003 stated that the Requests for Inter Partes Reexamination were returned with the decisions, in fact, no such Requests were received with the decisions. Accordingly, Petitioners respectfully request that the above-identified Request for Inter Partes Reexamination continue to be retained by the PTO pending a decision on this Petition."

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[7] Reexamination was subsequently ordered for the proceeding.

[8] That petition seeks to permit third party requester participation in the examination stage of the *ex parte* reexamination proceeding.

[9] The refund was effected by return of the check that was submitted with the request and marked void.

A review of the patent file and the boxes reveals that the original request papers were indeed not returned to the requester. Accordingly, the request papers deposited April 17, 2003, are being returned to the requester with this decision.

It is noted that petitioner requested [10] that the request papers deposited April 17, 2003, "continue to be retained by the PTO pending a final decision on all issues raised by this Petition." The instant decision is such a final decision, as set forth below.

LACK OF SERVICE

The requisite proof of service on the patent owner (a Certificate of Service) was not included with the instant petition papers. Pursuant to 37 CFR 1.903:

> "... any document filed by either the patent owner or the third party requester must be served on every other party in the reexamination proceeding in the manner provided in § 1.248. Any document must reflect service or the document may be refused consideration by the Office. The failure of the patent owner or the third party requester to serve documents may result in their being refused consideration."

Accordingly, the requester's petition is deficient for failure to reflect service of the response on the patent owner in accordance with 37 CFR 1.903.

Since the requisite proof of service on patent owner has not been included, a copy of the petition is being provided to the patent owner with this decision.

CONCLUSION

1. The present petition under 37 CFR 1.181(a)(3) is **granted** to the extent that the June 6, 2003, and June 12, 2003, decisions of the Director of the OPLA have been reviewed, but is **denied** as to overturning the decision by the Director of the OPLA.

2. The petition and this decision will be made of record in the patent file.

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[10] Petition at page 14.

3. A copy of the petition is being sent to the patent owner, along with this decision.

4. The request papers deposited April 17, 2003, are being returned to the requester with this decision.

5. No further reconsideration or review of this matter will be undertaken by way of petition.

6. This decision may be viewed as a **final agency action** within the meaning of 5 U.S.C. 704, for purposes of seeking judicial review. See MPEP 1002.02.

7. Telephone inquiries with regard to this decision should be directed to Kenneth M. Schor, Senior Legal Advisor, Office of Patent Legal Administration, at 703-308-6710.

Stephen G. Kunin
Deputy Commissioner for
Patent Examination Policy

November 12, 2003
C:\kiva\kenpet4\ip\5625670.rcn

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

MAILED
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Office of Director
Technology Center 1600

#17

In re Patent No.: 5,851,999 :
Issue Date: December 22, 1998 :
Serial No.: 08/443,861 : DECISION ON PETITION
Filed: May 22, 1995 : UNDER 37 CFR § 1.324
For: FLK-1 IS A RECEPTOR FOR VASCULAR :
ENDOTHELIAL GROWTH FACTOR :

This is a decision on the petition, filed August 06, 1999, to correct inventorship under 35 CFR § 1.324.

The request is GRANTED.

The patented file is being forwarded to the Certificate of Corrections Branch for issuance of a certificate naming only the actual inventors.

Michael G. Wityshyn
Supervisory Patent Examiner
Patent Examining Art Unit 1651

PENNIE AND EDMONDS
1155 AVENUE OF THE AMERICAS
NEW YORK, NY 10036-2711

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

DATE: February 02, 2000

TO: Certificate of Corrections Branch

FROM: Michael G. Wityshyn, SPE, Art Unit 1651

SUBJECT: Request for Certificate of Correction

Please issue a Certificate of Correction in U. S. Letters Patent No. 5,851,999 as specified on the attached Certificate.

Michael G. Wityshyn
Supervisory Patent Examiner
Patent Examining Art Unit 1651

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

MEM/FMH/mm.02

Paper No. 9

Kilpatrick and Cody
1100 Peachtree Street
Suite 2800
Atlanta, GA 30309-4530

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FEB 28 1994

OFFICE OF PETITIONS
A/C PATENTS

In re Application of :
Richard M. Lawn et al. :
Serial No. 07/969,863 : ON PETITION
Filed: October 30, 1992 :
Attorney Docket No. 3981D1 :

This is a decision on the petition under 37 CFR 1.137(b), filed December 15, 1993, to revive an unintentionally abandoned application.

The petition is granted.

Since this application is being revived for purposes of continuity only and since continuity has been established by this decision reviving the application, the application is again abandoned in favor of filewrapper continuing application, Serial No. 08/167,715, filed December 15, 1993.

The application is being forwarded to Group 1800.

Frances Hicks
Office of Petitions
Office of the Assistant Commissioner
for Patents

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SEP 20 2004

OFFICE OF PETITIONS

In re Application of :
Sajal Das et al :
Application No. 08/445,060 : DECISION GRANTING PETITION
Filed: May 19, 1995 : UNDER 37 CFR 1.137(b)
Attorney Docket No. 30-3715DIV-1 :

This is a decision on the petition under 37 CFR 1.137(b), filed June 9, 2004, to revive the above-identified application.

The petition is **GRANTED**.

The two-month period for filing an appeal brief in triplicate (accompanied by the fee required by 37 CFR 1.17(c)), runs from the date of this decision.

This application was filed on May 19, 1995. A Continued Prosecution Application was filed on December 1, 2000. Accordingly, a terminal disclaimer under 37 CFR 1.137(d) is not required as a condition for revival.

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 December 4, 2003, which set a shortened statutory period for reply of three (3) months. A three month extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the above-identified application became abandoned on June 5, 2003.

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; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the final Office action of December 4, 2003 is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-8680. Effective September 27, 2004, the new phone number will be (571) 272-3218.

This matter is being referred to Technology Center AU 1712 to await the filing of an Appeal Brief.

Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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

#89

AMY E. MANDRAGOURAS
LAHIVE & COCKFIELD, LLP
28 STATE STREET
BOSTON MA 02109

In re Application of	:
Richard D. Garman et al	:
Serial No.: 09/760,033	:PETITION DECISION
Filed: May 19, 1995	:
Attorney Docket No.: IMI-027CP4	:

This is in response to the petition under 37 CFR 1.181, filed January 16, 2002, to withdraw the holding of abandonment of the above identified application. The delay in acting on this petition is regretted, however it appears that the original petition was placed in the file but never forwarded for decision.

A review of the file history shows that the examiner mailed an Office action to applicants on May 26, 1999, setting a one month shortened statutory period for reply. The reply filed July 22, 1999, was found to be incomplete by the examiner who then mailed a letter of incompleteness to applicants on October 13, 1999. Applicants replied on October 28, 1999. The examiner then mailed a new restriction requirement to applicants on January 21, 2000, setting a one month shortened statutory period for reply. Applicants replied on February 18, 2000, which reply was also found to be incomplete as noted in a letter mailed to applicants on May 9, 2000. Applicants replied on May 19, 2000.

The examiner mailed a new Office action to applicants on March 27, 2001, setting a three month shortened statutory period for reply. The Office action acknowledges applicants' election of species and further indicates that the claims containing that species would be allowed if limited to that species. No requirement was made to cancel claims that were non-elected or directed to other species or to amend claims to multiple species so as to limit them to the elected species. Thus no action was required of applicants from the Office action. In addition, the summary sheet states in line 1 under "Disposition of Claims" all of the active claims in the application and fails to indicate which are withdrawn from consideration, implying that all are under consideration. Line 2 thereunder indicates the claims "above" are allowed with the written notation "if limited to

elected species SEQ. ID NO. 36". This implies that all claims are allowed including those withdrawn because of restriction. However, this is inconsistent with the written portion of the Office action which indicates only those claims from elected Group I of the restriction requirement are allowed. In summary, the Office action is both incomplete and internally inconsistent. A Notice of Abandonment for failure to reply to an Office action was mailed to applicants on November 5, 2001. This petition followed.

Applicants' failure to reply is also not readily excusable. Upon receipt, the Office action should have been docketed by applicants for reply within the indicated three month shortened statutory period. Further the action, having a due date for reply, should have been reviewed and appropriate action taken. In this instance a letter or telephone inquiry as to what action was required of applicants would have been appropriate since the Office action was not a Notice of Allowance and Issue Fee Due which would clearly have required the payment of an Issue Fee. Any Office action which sets a specific period for reply, in this instance a three month shortened statutory period for reply, cannot be ignored or not replied to, even if the reply is only a letter of inquiry as to what is required.

Applicants' petition is **GRANTED** on the basis that the Office action mailed March 27, 2001, was both incomplete and internally inconsistent.

The application is restored to pending status with the mailing of this decision.

The application will be forwarded to the examiner for further consideration.

Should there be any questions with respect to this decision, please contact William R. Dixon, Jr., by mail addressed to: Director, Technology Center 1600, Washington, D.C. 20231, or by telephone at (703)308-3824 or by facsimile transmission at (703) 308-7230.

Jasemine C. Chambers

Jasemine C. Chambers
Director, Technology Center 1600

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)
5648771	1997-07-15	08445357	1995-08-18	KBCONT-1

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

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	/Donald N. Halgren/	Date (YYYY-MM-DD)	2007-07-12
Name	Donald N. Halgren	Registration Number	27056

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 record s.

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

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

In re Patent No. 5648771
Issue Date: July 15,1997
Application No. 08445357
Filed: August 18,1995
Attorney Docket No. KBCONT-1

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed July 12,2007 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 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 July 12,2007 . 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 an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

Telephone inquires related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

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

FITZPATRICK CELLA HARPER & SCINTO
30 ROCKEFELLER PLAZA
NEW YORK NY 10112

In re Application of	:	
FUJII, YASUO et al.,	:	MAY 12 2009
Application No.: 08/447,009	:	DECISION ON
Filing or 371(c) Date: May 22, 1995	:	PETITION
Attorney Docket Number: 35.C7129-CON	:	

This is a decision in response to the "Petition to Withdraw Holding of Abandonment," filed November 6, 2008.

This petition is **GRANTED**.

The above-identified application became abandoned for failure to pay issue fee as required by, and within the three-month period set in, the Notice of Allowability which was mailed January 28, 1997.

In view of the foregoing, the holding of abandonment for failure to timely pay the issue fee is hereby withdrawn and the application restored to pending status.

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

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)
5666112	1997-09-09	08447116	1995-08-18	

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

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	/Donald N. Halgren/	Date (YYYY-MM-DD)	2007-07-12
Name	Donald N. Halgren	Registration Number	27056

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.**

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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.

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UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

In re Patent No. 5666112
Issue Date: September 9,1997
Application No. 08447116
Filed: August 18,1995
Attorney Docket No. KBCONT-2

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed July 12,2007 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 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 July 12,2007 . 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 an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

Telephone inquires 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)
5596311	1997-01-21	08/447,715	1995-05-23	

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
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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

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◯ 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

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	/Paul S. Angello/	Date (YYYY-MM-DD)	2009-03-19
Name	Paul S. Angello	Registration Number	30991

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.**

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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.

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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

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

In re Patent No. 5596311
Issue Date: January 21,1997
Application No. 08447715
Filed: May 23,1995
Attorney Docket No. PREC-300

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed March 19,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 March 19,2009 . 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.

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

Paper No. 40

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

MAILED

APR - 3 2002

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BORIS MASINOVSKY *et al.*

Appeal No. 2001-1732
Application No. 08/448,649

DECISION ON PETITION

On March 24, 2003, the appellants filed a Petition under 37 CFR § 1.183 requesting that the separate paper requirement of 37 CFR § 1.194(b) be suspended (Paper No. 39). The basis for the request is that the appellants believe the filing of a request for oral hearing in the reply brief transmittal sheet (first paper) satisfied the requirement of 37 CFR § 1.194(b) in that it was separate from the reply brief (second paper). The Petition has been DENIED.

Although the appellants may have submitted both a reply brief and a transmittal of a reply brief, which the latter included therein an oral hearing request, fact remains that a separate paper requesting an oral hearing had not been submitted. Moreover, there has not been presented a showing of facts that an extraordinary situation existed which prevented the filing of a separate

paper requesting an oral hearing. In fact, the appellants have not provided any explanation of why a separate paper requesting an oral hearing was not filed.

Accordingly, for the reasons given above, the Petition is DENIED, and

It is further ORDERED that the application be decided based upon the written record before the Board of Patent Appeals and Interferences.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: _____

CRAIG R. FEINBERG
Program and Resource Administrator
(703) 308-9797

Ms. Greta E. Noland
Marshall, Gerstein & Borun
6300 Sears Tower
233 South Wacker Drive
Chicago, IL 60606-6357

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Paper No. 23

HUNTON & WILLIAMS
1900 K STREET, NW
12TH FLOOR
WASHINGTON, DC 20006

COPY MAILED

MAY 15 2001

OFFICE OF PETITIONS
A/C PATENTS

In re Application of :
John C. Harvey et al. :
Application No. 08/449,097 : NOTICE
Filed: May 24, 1995 :
Attorney Docket No. 05634.0208 :

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.**

Inquiries related to this communication should be directed to the Office of Petitions Staff at (703) 305-9285.

This file is being forwarded to Technology Center 2600.

Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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)
5617873	1997-04-08	08449473	1995-05-23	LAR 15406-1

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

	Fee	Code
◯	3 ½ year	(1551)
◯	7 ½ year	(1552)
◉	11 ½ year	(1553)

Small Entity

	Fee	Code
◯	3 ½ year	(2551)
◯	7 ½ year	(2552)
◯	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

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	/helen galus/	Date (YYYY-MM-DD)	2009-05-19
Name	Helen M. Galus	Registration Number	40615

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

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

In re Patent No. 5617873
Issue Date: April 8,1997
Application No. 08449473
Filed: May 23,1995
Attorney Docket No. LAR15406-1

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed May 19,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 May 19,2009 . 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

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

JAN 26 2007

MILLEN, WHITE, ZELANO & BRANIGAN, P.C.
2200 CLARENDON BLVD.
SUITE 1400
ARLINGTON VA 22201

In re Application of	:	
Paul Novotny	:	
Serial No.: 08/450,336	:	PETITION DECISION
Filed: May 25, 1995	:	
Attorney Docket No.: POPOV-0003	:	

This is a decision on applicants' request for a one month Extension of Time under 37 CFR 1.136(b) filed on January 19, 2007.

The Request is **GRANTED**.

Patent Owner's due date for filing a reply to the Examiner's Answer mailed November 28, 2006, is extended by ONE MONTH to February 28, 2007.

William R. Dixon, Jr.
Special Program 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
www.uspto.gov

~~JAN 26 2007~~ remailed Feb 5, 2007

MILLEN, WHITE, ZELANO & BRANIGAN, P.C.
2200 CLARENDON BLVD.
SUITE 1400
ARLINGTON VA 22201

In re Application of	:
Paul Novotny	:
Serial No.: 08/450,336	: PETITION DECISION
Filed: May 25, 1995	:
Attorney Docket No.: POPOV-0003	:

This is a decision on applicants' request for a one month Extension of Time under 37 CFR 1.136(b) filed on January 19, 2007.

The Request is **GRANTED**.

Patent Owner's due date for filing a reply to the Examiner's Answer mailed November 28, 2006, is extended by ONE MONTH to February 28, 2007.

William R. Dixon, Jr.
Special Program Examiner
Technology Center 1600

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

Mem/mm.04

Paper No. 19

Nora Stein-Fernandez
SmithKline Beecham Corporation
Corporate Patents U S UW2220
P.O. Box 1539
King of Prussia, PA 19406-0939

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APR 17 2000

SPECIAL PROGRAMS OFFICE
DAC FOR PATENTS

In re Application of :
Carlo Farina, et al. :
Application No. 08/450,437 : ON PETITION
Filed: May 25, 1995 :
Attorney Docket No. P30958C2 :

This is a decision on the petition, filed September 22, 1999, to withdraw the above-identified application from issue pursuant to the provisions of 37 CFR 1.313(b)(3).

The petition is granted.

In view of petitioner's unequivocal statement that "the allowed claims 1-14 and 17-21 are unpatentable", the application is withdrawn from issue in accordance with 37 CFR 1.313(b)(3).

The application will be forwarded to Technology Center 1700.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 305-9282.

Marianne E. Morgan
Petitions Examiner
Office of Petitions
Office of the Deputy Assistant Commissioner
for Patent Policy and Projects

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov

Paper No. 35

LYON & LYON LLP
SUITE 4700
633 WEST FIFTH STREET
LOS ANGELES , CA 90071-2066

COPY MAILED

JUL 25 2001

OFFICE OF PETITIONS
A/C PATENTS

In re Application of
MOYLE, MATTHEW, *et al.*
Application No. 08/450,482
Filed: 05/26/1995
Attorney Docket No. 213/289

ON PETITION

This is a decision on the November 13, 2000 petition which requests under 37 C.F.R. §1.182 that a previously filed terminal disclaimer be withdrawn. The petition fee has been received.

The petition is granted.

Petitioner asserts that the terminal disclaimer filed on December 16, 1998 is unnecessary. The examiner has agreed.

This application will be forwarded to Technology Center 1600 for correction of PALM and file jacket records consistent with this decision.

Telephone inquiries relative to this decision should be directed to Petitions Attorney Scott M. Ledford at (703) 306-5593.

Brian Hearn
Senior Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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)
5627323	1997-05-06	08450580	1995-05-25	

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

Sole Patentee			
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	/Michael Stern/	Date (YYYY-MM-DD)	2010-03-24
Name	Michael Stern		

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

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

In re Patent No. 5627323
Issue Date: May 6,1997
Application No. 08450580
Filed: May 25,1995
Attorney Docket No.

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed March 24,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 March 24,2010 . 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.

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)
5778878	1998-07-14	08451771	1995-05-26	

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

Sole Patentee			
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	/Keith Kellam/	Date (YYYY-MM-DD)	2008-06-19
Name	Keith Kellam		

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.**

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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.

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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.

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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

Commissioner for Patents
United States Patent and Trademark Office
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In re Patent No. 5778878
Issue Date: July 14,1998
Application No. 08451771
Filed: May 26,1995
Attorney Docket No. A0MB-3.0-001

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed June 19,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 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 June 19,2008 . 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 an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

Telephone inquires related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
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Paper No. 23

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OFFICE OF PETITIONS

In re Application of
Baekkeskov et al.
Application No. 08/452,053
Filed: May 25, 1995
Attorney Docket No. 2307AA031212

ON PETITION

This is a decision on the petition filed May 29, 2001.

The petition under 37 CFR 1.181 to withdraw the holding of abandonment is **dismissed**.

The petition under 37 CFR 1.137(b) to revive the application is **granted**.

The petition under 37 CFR 1.183 to waive the requirement for a terminal disclaimer is **dismissed**.

This application became abandoned for failure to timely reply within three months to the final Office action mailed June 23, 1998. A one month extension of time was obtained. Therefore, the application became abandoned on October 24, 1998. A Notice of Abandonment was mailed on March 26, 2001.

Facts:

A final Office action was mailed on June 23, 1998.

On October 23, 1998, petitioner mailed a response and one month extension request to the Office. The response did not place the application in condition for allowance.

Petitioner failed to purchase any further extensions of time. Accordingly, the application became abandoned on October 24, 1998.

On December 28, 1998, after the application became abandoned AND after expiration of the maximum extendable period of time, the examiner mailed a a letter stating that *ex parte* prosecution was suspended. The petition incorrectly states on page 4, "the abandonment arose because applicants received a notice of suspension of prosecution dated by the Examiner within the six monthy statutory period for reply to the final office action."

Analysis:

The holding of abandonment cannot be withdrawn because the application properly became abandoned, by rule and by statute, because petitioner failed to file, by December 23, 1998, a proper response (and extension of time if necessary) in the form of an amendment placing the application in condition for allowance, a submission under 37 CFR 1.129, or a notice of appeal.

The application was properly held to be abandoned.[1]

Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b) and the application is hereby revived.
As to the petition under 37 CFR 1.183, the requirement for a terminal disclaimer is not waived. 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.

Equitable powers should not be invoked to excuse the performance of a condition by a party that has not acted with reasonable, due care and diligence.[2] The Office, where it has the power to do so, should not relax the requirements of established practice in order to save an applicant from the consequence of his delay.[3] Circumstances resulting from petitioner's, or petitioner's counsel's, failure to exercise due care, or lack of knowledge of, or failure to properly apply, the patent statutes or rules of practice are not, in any event, extraordinary circumstances where the interests of justice require the granting of relief.[4]

There is no adequate showing of "an extraordinary situation" in which "justice requires" suspension of the rules.[5]

Petitioner was aware of the existence of the final rejection but, after October 23, 1998, failed to file a response due to petitioner's expectation that the examiner would suspend prosecution prior to the expiration of the time period. However, if petitioner wished to ensure the application would not become abandoned, petitioner was responsible for filing an amendment placing the application in condition for allowance, a submission under 37 CFR 1.129, or a notice of appeal. Merely waiting and hoping that the examiner would mail a new office action, without taking any further action to ensure that the application would not become abandoned, was not an exercise of due care such that justice requires waiver of the rules.

Even if petitioner's conduct up until the expiration of the statutory period for reply was reasonable, petitioner's future conduct was not. The six month statutory period ended at midnight of December 23, 1998. Once petitioner received the December 28, 1998, Office letter which states it was mailed on December 28, 1998, petitioner was aware that the examiner had not stopped *ex parte* prosecution prior to the end of the statutory time period for reply to the final office action. Upon receipt of the December 28, 1998 letter, petitioner should have realized that the application was abandoned and taken steps to revive the application. Instead, the instant petition was not filed until May 29, 2001.

For the above reasons, the requirement for a terminal disclaimer is not waived.

The terminal disclaimer filed May 29, 2001, under 37 CFR 1.137(c) has been entered and made

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[1] See Lorenz v. Finkl, 333 F.2d 885 (CCPA 1964).

[2] U.S. v. Lockheed Petroleum Services, 709 F.2d 1472, 1475 (Fed. Cir. 1983).

[3] See Ex Parte Sassi, 1906 Dec. Comm'r. Pat. 205, 206 (Comm'r Pat. 1906).

[4] See In re Tetrafluor, Inc., 17 USPQ2d 1160, 1162 (Comm'r Pats. 1990); In re Bird & Son, Inc., 195 USPQ 586, 588 (Comm'r Pats. 1977).

[5] See Nitto Chem. Indus. Co. v. Comer, 39 USPQ2d 1778, 1782 (D.D.C. 1994) (circumstances are not extraordinary, and do not require waiver of the rules, when a party makes an avoidable mistake in filing papers).

of record. Effective September 8, 2000, 37 CFR 1.137(c)(1) has been added to state that a terminal disclaimer filed pursuant to this rule must dedicate to the public a terminal part of the term of any patent granted thereon equivalent to the lesser of: 1) the period of abandonment of the application; or 2) the period extending beyond twenty years from the date on which the application for the patent was filed in the United States, or, if the application contains a specific reference to an earlier filed application(s) under 35 U.S.C. 120, 121 or 365(c), from the date on which the earliest such application was filed. 65 Fed. Reg. 54,674 (2000). Accordingly, the period of the terminal disclaimer filed May 29, 2001, will be equivalent to the lesser of period (1) or (2), as noted above, for this application.

The file is now being forwarded to Technology Center 1600 for consideration of the submission under 37 CFR 1.129.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 37

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BARRETT J. ROLLINS & CHARLES D. STILES

MAILED
DEC 13 2002
PAT & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Appeal No. 2001-0869
Application No. 08/453,347

DECISION ON PETITION

On December 4, 2002 a paper entitled "Response" (Paper No. 35), was filed by applicants. This paper was refiled on December 6, 2002, entitled "Petition to Waive Rule 37 C.F.R. §1.196(d) and to Request Extension of Time Period for Response" was filed (Paper No. 36). In this petition, applicants, through their counsel indicated that a paper entitled "Order Under 37 CFR §1.196(d) mailed on October 18, 2002 (Paper No. 34) was mailed to the wrong address, and that counsel has just received the Order. The request is granted.

The time period for response is set to expire TWO MONTHS from the date of this letter. As stated in 37 CFR §1.196(d), this time period is not extendable. Failure to respond to the Order mailed October 18, 2002 (Paper No. 26) in the time period set will result in the dismissal of the appeal in regard to all claims.

BOARD OF PATENT APPEALS
AND INTERFERENCES

Bruce H. Stoner, Jr.
Chief Administrative Patent Judge
(703) 308-9797

DMS

cc. David E. Brook
Hamilton, Brook, Smith and Reynolds
Two Militia Park
Lexington, MA 02421-4799

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DEC 16 2008

Leslie Morioka
WHITE & CASE LLP
1155 Avenue of the Americas
New York, NY 10036

In re: Patent Term Extension Application for U.S. Patent No. 5,817,338

DENIAL OF PATENT TERM EXTENSION APPLICATION FOR U.S. PATENT NO. 5,817,338

This is in response to the application for extension of the patent term of U.S. Patent No. 5,817,338 (the '338 patent) under 35 U.S.C. § 156, which was filed in the United States Patent and Trademark Office ("USPTO") on August 19, 2003. The patent term extension application ("PTE application") was filed by AstraZeneca AB ("Applicant"), the patent owner of record. Extension is sought based upon the premarket review under § 505 of the Federal Food, Drug, and Cosmetic Act ("FFDCA") of a human drug known by the tradename, Prilosec OTC®, which was approved for commercial marketing and use by the Food and Drug Administration ("FDA") on June 20, 2003.

This is also in response to two petitions filed by Applicant on May 30, 2008, and June 10, 2008, under 37 C.F.R. § 1.181, seeking to invoke the supervisory authority of the Director in order to "request that the PTO maintain its original position that Applicant's PTE Application was submitted timely. . . ."

A determination has been made that the '338 patent is **NOT** eligible for patent term extension based upon the regulatory review period of Prilosec OTC®. Therefore, Applicant's PTE application is **DENIED**. Because of the determination that the '338 patent is ineligible for patent term extension, Applicant's two petitions are in turn **denied as moot**.

FACTUAL BACKGROUND

1) On October 6, 1988, the USPTO issued the '338 patent to Pontus J.A. Bergstrand and Kurt I. Lövgren; it was originally assigned to Astra Aktiebelag, now AstraZeneca AB.

2) On June 20, 2003, the FDA approved New Drug Application ("NDA") No. 21-229, thereby granting permission for commercial marketing or use of Prilosec OTC® (omeprazole magnesium).

3) On August 19, 2003, Applicant filed a PTE application under section 156 to extend the term of the '338 patent based on the FDA regulatory review period of Prilosec OTC®.

4) On July 19, 2004, pursuant to the Memorandum of Understanding Between the Patent and Trademark Office and the Food and Drug Administration, *see* 52 Fed. Reg. 17830, May 12, 1987, the USPTO requested assistance from FDA ("First USPTO Letter to FDA") in determining eligibility of the '338 patent for patent term extension based on the regulatory review period of Prilosec OTC®. The USPTO indicated in its letter that "the subject patent would be eligible for extension of the patent term."

5) On October 19, 2004, the FDA responded to the First USPTO Letter to FDA. The FDA indicated that Prilosec OTC® was subject to a regulatory review period within the meaning of § 156(g) as required by § 156(a)(4). The FDA further indicated that the permission for commercial marketing or use of Prilosec OTC® constituted the first permitted commercial marketing or use of the product, as defined under § 156(f)(1). Finally, the FDA indicated that the NDA was approved on June 20, 2003, and that the submission of the PTE Application on August 19, 2003, was timely within the meaning of § 156(d)(1).

6) On April 1, 2008, the USPTO sent a second letter to the FDA ("Second USPTO Letter to FDA") requesting that FDA determine the applicable regulatory review period pursuant to § 156(d)(2)(A). The USPTO letter nevertheless requested additional information regarding: (1) the timeliness of the PTE Application in light of the plain meaning of the statutory deadline for filing a patent term extension application as stated in § 156(d)(1) and as interpreted in *Unimed v. Quigg*, 888 F.2d 826 (Fed. Cir. 1989); and (2) whether Prilosec OTC® constituted the first permitted commercial marketing or use based on the plain statutory language of § 156(f)(2), and related court decisions, in light of the previous FDA approval of NDA No. 19-810 for Prilosec® (omeprazole) on September 14, 1989. The USPTO indicated that it considered the PTE Application to be untimely filed and that Prilosec OTC® does not constitute the first permitted commercial marketing or use of the product under the provision of law under which regulatory review occurred.

7) On May 30, 2008, Applicant filed a petition pursuant to the provisions of 37 C.F.R. § 1.181 ("Original Petition") seeking to invoke the supervisory authority of the Director in order to "request that the PTO maintain its original position that Applicant's PTE Application was submitted timely. . . ." *See* Original Petition at 15.

8) On June 10, 2008, Applicant filed a revised petition correcting errors in the Original Petition without amending or changing the substance of that earlier petition ("Revised Petition").

9) On October 21, 2008, the FDA responded to the Second USPTO Letter to FDA, indicating that the PTE Application was not timely filed and that the approval of NDA 21-229 for Prilosec OTC® was not the first permitted commercial marketing or use as required by section 156(a)(5)(A). The FDA explained that it erred as to both of the USPTO's prior inquiries regarding Prilosec OTC®.

DECISION

This dismissal is a decision on the merits of the PTE application as well as a decision on the merits of the Original Petition and the Revised Petition.

I. Prilosec OTC® Is Not the First Permitted Commercial Marketing or Use of the Product under the Provision of Law under which Regulatory Review Occurred as Required by 35 U.S.C. § 156(a)(5)(A)

A. The USPTO Has Construed "Active Ingredient" as Used in the Definition of "Product" To Mean the Underlying Molecule or Ion (Excluding those Appended Portions of the Molecule that Cause It to be a Salt or Ester) Responsible for the Physiological or Pharmacological Action of the Drug

Section 156(a) sets forth several eligibility requirements for a patent term extension. *See* 35 U.S.C. § 156(a)(1) – (a)(5), (d)(1) & (e)(1). Under 35 U.S.C. § 156(a)(5)(A), "the permission for the commercial marketing or use of the product . . . [must be] the *first* permitted commercial marketing or use of the *product* under the provision of law under which such regulatory review period occurred." (Emphasis added). Based on that language, whether the '338 patent is eligible for patent term extension turns on whether the approval of Prilosec OTC® is the first permitted commercial marketing or use of the "product" under the provision of law under which the regulatory review period occurred.

The term "product" is expressly defined in § 156(f) as follows:

(f) For purposes of this section:
(1) The term "product" means:
(A) A drug product . . .
(2) The term "drug product" means the *active ingredient* of -
(A) A new drug, antibiotic drug, or human biological product . . . *including any* salt or ester of the active ingredient, as a single entity or in combination with another active ingredient.

35 U.S.C. § 156(f) (emphases added). Thus, the definition for "product" can be expressed as:

Product = drug product = the active ingredient of [a] new drug . . . including any

salt or ester of the active ingredient

Section 156 does not expressly define the term "active ingredient." The USPTO has defined the term to mean the underlying molecule or ion (excluding those appended portions of the molecule that cause it to be a salt or ester) responsible for the physiological or pharmacological action of the drug. The USPTO arrived at this definition based on the plain language of section 156(f)(2), giving effect to each word in that provision. Specifically, in distinguishing "active ingredient" from a "salt or ester of the active ingredient," the statute suggests that the "active ingredient" cannot itself be a salt or an ester. It necessarily follows that the "active ingredient" therefore must be a distinct molecule or ion from either a salt or an ester; *i.e.*, an underlying molecule or ion (excluding those appended portions of the molecule that cause it to be a salt or ester) responsible for the physiological or pharmacological action of the drug.

Inserting the USPTO's definition of "active ingredient" back into the statute, section 156(f)'s "product" includes: (i) the non-salified and non-esterified form of the active ingredient (i.e., the underlying molecule or ion (excluding those appended portions of the molecule that cause it to be a salt or ester) responsible for the physiological or pharmacological action of the drug substance); (ii) salts of the underlying molecule or ion; and (iii) esters of the underlying molecule or ion. In other words, a "product" can be expressed as:

> Product = the non-salified and non-esterified form of the active ingredient (*i.e.*, the underlying molecule or ion responsible for the physiological or pharmacological action of the drug substance) = salts of the underlying molecule or ion = esters of the underlying molecule or ion

Because the term "product" covers three different types of chemical formulations, a salt of a molecule is statutorily the same "product" under § 156 as an ester of the molecule and as the underlying molecule itself. The same is true for an ester of a molecule as well as the underlying molecule itself. Accordingly, if any one of the three formulations has previously been granted permission for commercial marketing or use under the same provision of law, then any subsequent formulation granted permission for commercial marketing or use under the same provision of law will not meet the eligibility requirements in § 156(a)(5)(A); it will not be first.

B. The USPTO's Construction of "Active Ingredient" Matches the Federal Circuit's Construction

The Federal Circuit has construed the term "active ingredient" as used in § 156 like the USPTO. In *Pfizer v. Dr. Reddy's Labs., Ltd.*, 359 F.3d 1361 (Fed. Cir. 2004), the Federal Circuit addressed the meaning of the statutory phrase "active ingredient" as used in section 156(f)(2). The *Pfizer* Court accepted the FDA's definition of the term "active ingredient" as meaning "active moiety." *Id.* at 1366 (citing *Abbreviated New Drug Application Regulations: Patent and Exclusivity Provisions*, 59 Fed. Reg. 50,338, 50,358 (F.D.A. Oct. 3, 1994)). The Court, in turn, observed that "active moiety" means "the molecule or ion excluding those appended portions of the molecule that cause the drug to be an ester, salt . . . responsible for the physiological or

pharmacological action of the drug substance," *id.* (quoting 21 C.F.R. § 314.108(a))(omission in original). Accordingly, the USPTO's definition of "active ingredient" matches the Federal Circuit's construction of that term as referring to an underlying molecule or ion (excluding those appended portions of the molecule that cause it to be a salt or ester) responsible for the physiological or pharmacological action of the drug.

The Federal Circuit has issued two other decisions that address the meaning of terms used in section 156, both of which pre-date *Pfizer*. Neither decision, however, specifically construes the proper scope and meaning of "active ingredient." First, in *Fisons plc v. Quigg,* 876 F.2d 99 (Fed. Cir. 1989), the Federal Circuit addressed the meaning of the phrase "the first permitted commercial marketing or use of the product." Fisons argued that "product" should not be interpreted to mean "active ingredient," but instead referred to the "particular drug product that the FDA approved." The Court disagreed, affirming the district court's finding that the term "'product' as used in Subsection (a)(5)(A) refers only to the patented drug's active ingredient." *Id.* at 102. Second, in *Glaxo Operations UK Ltd. v. Quigg*, 894 F.2d 392 (Fed. Cir. 1990), the Federal Circuit addressed whether the USPTO was correct that Congress intended "product" to mean "any 'new chemical entity,' *i.e.*, 'new active moiety.'" *Id.* at 394. The Court concluded that USPTO's interpretation was incorrect because Congress "provid[ed] an explicit and precise definition of 'product' in § 156(f)(2), using well-established scientific terms." *Id.* at 399. Hence, both *Fisons* and *Glaxo* addressed the meaning of the term "product" as necessary for resolution of those cases, but in no way prescribed a definition for "active ingredient."

C. Public Policy Supports the USPTO's Construction of "Active Ingredient"

In *Fisons plc v. Quigg,* 1988 WL 150851 (D.D.C. 1988), the district court reviewed the legislative history of section 156 in detail and found that Congress intended for patent term extensions to be available only to pioneering new chemical entities and not to follow-on drugs. In the Court's words:

> Congress did not intend that every patented drug that experienced lengthy or delayed regulatory review receive the benefits of patent restoration. Under Section 156(a)(5)(A), only new, pioneer chemical entities were to have their effective lives legislatively restored.

Id. at *9. In making that finding, the Court walked through the various criticisms of § 156(a)(5)(A), noting that many commentators, particularly the pharmaceutical industry, attacked § 156(a)(5)(A) for not applying to "new uses for the drug, new dosage forms or innovative formulations, all of which require full new drug applications." *Id.* at *7. The Court found that Congress did not yield to the pressure: "By enacting and not amending Section 156 in this regard, Congress implicitly, but clearly, rejected industry's plea, like that articulated by Stafford, for loosened eligibility requirements." *Id.* at *8. Additionally, the Court observed that the House rejected a proposed amendment supported by thirteen Representatives that sought to make patent term extension available for patents protecting aspects beyond just the pioneer chemical entity like use, dosage, and formulation. *Id.*

By properly differentiating between (i) the non-salified and non-esterified form of the

active ingredient (*i.e.*, the underlying molecule or ion responsible for the physiological or pharmacological action of the drug substance); (ii) salts of the underlying molecule or ion; and (iii) esters of the underlying molecule or ion, the USPTO gives effect to Congress's intent to reward the patents protecting only pioneering new chemical entities with patent term extensions. Without such differentiation, a patent protecting the follow-on salt of an underlying molecule could qualify for patent term extension because the follow-on salt would be treated as a different "product" from the underlying pioneering molecule. The same would be true for a follow-on ester on an underlying pioneering molecule as well as the follow-on acid or base for a pioneering salt or ester.

D. The "Active Ingredient" in Prilosec OTC® is Omeprazole, the Same "Active Ingredient" as in Prilosec®

Prilosec OTC® is the brand name for omeprazole magnesium. Said differently, Prilosec OTC® is omeprazole formulated as a salt; in particular, a magnesium salt. Applicant admits as much in its PTE Application, stating that omeprazole magnesium "is the magnesium salt of omeprazole." PTE Application at 2, ¶1. Before the FDA approved Prilosec OTC®, it approved Prilosec®. Prilosec® is the brand name for omeprazole, a base molecule. Applicant acknowledges in its PTE Application that Prilosec® is omeprazole. *Id.* at 2, ¶4. The following chart summarizes the various nomenclatures for the drugs at issue here:

Brand Name	**Chemical Name**	**Formulation Type**	**Underlying Molecule (aka Active Ingredient)**
Prilosec®	Omeprazole	Base	Omeprazole
Prilosec OTC®	Omeprazole magnesium	Salt of base	Omeprazole

Under the USPTO's construction of "active ingredient" and in turn "product" as used in section 156(f), Prilosec OTC® is the same product as Prilosec®. Both are formulations of the same underlying molecule – omeprazole. Prilosec OTC ® is a salt formulation of omeprazole, while Prilosec® is the base. Because Prilosec® is considered to be the same product as Prilosec OTC® and because Prilosec ® was commercially marketed before Prilosec OTC®, the approval of Prilosec OTC® is not the first commercial marketing or use of the product under the provision of law under which the regulatory review period occurred.

Notably, the FDA has advised the USPTO that the approval of Prilosec OTC® fails to meet the patent term extension eligibility requirement set forth in section 156(a)(5)(A). Specifically, the FDA official records indicate that the approval of NDA No. 21-229 (omeprazole magnesium) does not constitute the first permitted commercial marketing or use of the product as required by section 156(a)(5)(A) in light of the approval of NDA No. 19-810 (omeprazole). Additionally, after

approving Prilosec OTC® for commercial marketing or use, the FDA published information about the drug on its website. That information supports the USPTO's determination that the approval of Prilosec OTC® does not constitute the first permitted commercial marketing or use of the product subject to the regulatory review period as required by § 156(a)(5)(A). On the FDA's webpage called Drug@FDA,[1] the FDA indicated that the "Chemical Type" for Prilosec OTC® is "2 New ester, new salt or other noncovalent derivative" and "3 New formulation." The FDA also created an online resource for questions and answers about Prilosec OTC®.[2] The FDA asked the question: "Will Prilosec OTC work as well as the prescription strength Prilosec?" *See* question 4. The FDA answered: "Both prescription Prilosec and Prilosec OTC contain the same active ingredient, omeprazole, which effectively stops acid production."

In sum, because the FDA's approval of Prilosec OTC® does not constitute the first permitted commercial marketing or use of the product under the provision of law under which the regulatory review period occurred in light of the earlier grant of permission for commercial marketing and use of Prilosec®, the eligibility requirement set forth in section 156(a)(5)(A) is not satisfied and the '338 patent is ineligible for patent term extension.

II. The Submission of the PTE Application for U.S. Patent No. 5,817,338 Is Untimely Within the Meaning of 35 U.S.C. § 156(d)(1)

As noted earlier, section 156(a) contains several eligibility requirements for a patent term extension. In addition to the requirement that the drug be the first commercial marketing or use of the product under the provision of law under which regulatory review occurred, discussed in the previous section, *see supra* § I, the PTE application must be timely filed. Section 156(d)(1) provides, in relevant part:

> To obtain an extension of the term of a patent under this section, the owner of record of the patent or its agent shall submit an application to the Director. Except as provided in paragraph (5), such an application may only be submitted within the sixty-day period *beginning on the date the product received permission under the provision of law under which the applicable regulatory review period occurred* for commercial marketing or use.

35 U.S.C. § 156(d)(1) (emphasis added). The "beginning on" language makes clear that the triggering date for filing a PTE application is the day of FDA approval, *i.e.*, the date of the NDA approval letter. The triggering date is not the day after FDA approval. In other words, the first day of the sixty-day period within which an applicant must submit a PTE application is the day of FDA approval. The day after FDA approval is considered to be the second day in the sixty-day application window.

In *Unimed, Inc. v. Quigg*, 888 F.2d 826, 828 (Fed. Cir. 1989), the Federal Circuit

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1 *See* Drugs@FDA found at http://www.accessdata.fda.gov/scripts/cder/drugsatfda/, last visited on 12/3/2008, copy attached hereto as Appendix 1.

2 *See* http://www.fda.gov/cder/drug/infopage/prilosecOTC/prilosecotcQ&A.htm, last visited on 12/3/2008, copy attached hereto as Appendix 2.

articulated that "section 156(d)(1) admits of no other meaning than that the sixty-day period begins on the FDA approval date." To be sure, the Federal Circuit explained the correct triggering date through the facts in that case by stating: "the sixty-day period specified in section 156(d)(1) commenced on May 31, 1985, the date the FDA's letter to Unimed giving notice of its final approval of Marinol. . . ." *Id.* at 829.

Here, Applicant received FDA approval on June 20, 2003, triggering the start of the sixty-day period for filing its PTE application and making its PTE application due on or before August 18, 2003. Applicant did not, however, file its PTE application until August 19, 2003, one day late. It is unclear how or why Applicant missed the sixty date deadline because Applicant correctly indicated in its PTE application that the first day of the sixty-day period "began on June 20, 2003." Specifically, Applicant stated: "This application is timely filed, pursuant to 35 U.S.C. § 156(d)(1) and 37 C.F.R. § 1.720(f), within the permitted sixty-day (60-day) period *that began on June 20, 2003, the date the product received permission under 21 U.S.C. § 355(b),* and that will expire on August 19, 2003." PTE Application at 3, ¶5 (emphasis added). In any event, because Applicant filed its PTE application one day late, the eligibility requirement set forth in section 156(d)(1) is not satisfied and the '338 patent is ineligible for patent term extension for this independent reason.

III. Applicant's Original Petition and Revised Petition Fail on the Merits and Are Moot

Applicant filed a petition requesting that the supervisory authority of the Director be invoked "to prevent the USPTO from retroactively applying to the subject PTE application an apparently new method of determining timeliness that had not yet been announced to the public." Revised Petition at 1. In its Revised Petition, Applicant did not assert that the USPTO interprets the statute, or the Federal Circuit's construction of it in *Unimed*, incorrectly in its Second USPTO Letter to FDA. Nor does Applicant deny that it filed its PTE Application on day sixty-one of the period beginning on the date of approval by the FDA. Instead, Applicant argues that there has been a change in methodology by the USPTO and the FDA in applying the provisions of § 156(d)(1) from the First USPTO Letter to FDA in 2004 to the Second USPTO Letter to FDA in 2008. According to Applicant, that policy change cannot be retroactively applied to its PTE Application in light of *SEC v. Chenery*, 332 U.S. 194 (1947), and *Retail, Wholesale & Dep't Store Union v. NLRB*, 466 F.2d 380, 390 (D.C. Cir. 1972). Thus, Applicant argues that the USPTO should be bound to the timeliness statements made in the First USPTO Letter to FDA and that the USPTO should find that its PTE Application was timely filed under section 156(d)(1).

Applicant's arguments fail because the USPTO has the power to make a correction upon realizing a mistake. In any event, because the USPTO herein determines that Applicant's PTE Application fails to satisfy two of the statutory eligibility requirements, *see supra* §§ I & II, Applicant's Original Petition and Revised Petition are moot.

A. The USPTO Has Revised Its Methodology for Making Timeliness Determinations to Conform to the Plain Language of Section 156 and Case Law

Applicant is correct that the USPTO has changed the way in which it makes the timeliness count between 2004 and 2008. The agency has done so because it realized that it was erroneously beginning the sixty-day count on the wrong day. By not counting the date of FDA approval as one of the sixty days included in the time period for filing a PTE application, the USPTO was failing to comply with section 156 and case law. The FDA made the same error as the USPTO and also corrected itself. In its response to the USPTO Second Letter to FDA, the FDA indicated:

> We have reexamined our records and have concluded that our October 19, 2004, determinations were in error. . . . FDA incorrectly excluded the day of approval from the 60-day time period for determining whether the PTE Application was timely. Consequently, the closing date for submission of a timely PTE Application was Monday, August 18, 2003, which makes the submission of the PTE Application on August 19, 2003, not timely within the meaning of 35 U.S.C. § 156(d)(1).

If the USPTO treated Applicant's late filed PTE application as timely filed, as Applicant requests, the agency would perpetuate an erroneous application of section 156(d)(1); the USPTO cannot do so. Moreover, the USPTO has no discretion under section 156 to waive any of the eligibility requirements.

B. Courts Have Consistently Held that Administrative Agencies Have the Authority to Correct Previous Mistakes

Here, until the instant dismissal of the PTE application, the USPTO has not issued any agency determination regarding the eligibility of Applicant's patent for a patent term extension; the agency released only preliminary views in the First and Second USPTO Letters to FDA. As a result, no rights to a patent term extension have vested. Because no rights have vested to Applicant, reconsideration of the preliminary agency position expressed in the First USPTO Letter to FDA is clearly proper, especially in light of the USPTO's initial erroneous application of the plain language of section 156(d)(1).

Moreover, even if the First USPTO Letter to FDA could be considered as an agency determination, inherent authority exists for a federal agency to remediate previous error and diverge from a past practice of incorrectly administrating a statute. *See The Last Best Beef v. Dudas*, 506 F.3d 333, 340 (4th Cir. 2007) ("[f]irst, federal agencies, including the USPTO, have broad authority to correct their prior errors."); *see also Trujillo v. General Electric Co.*, 621 F.2d 1084 (10th Cir. 1980) (("Administrative agencies have an inherent authority to reconsider their own decisions, since the power to decide in the first instance carries with it the power to reconsider") (citing *Albertson v. Fed. Commc'ns Comm'n*, 182 F.2d 397 (D.C. Cir. 1950)). Indeed, the Federal Circuit has explained that past erroneous construction of a statute should not be

perpetuated. *See In re Boulevard Entertainment, Inc.*, 334 F.3d 1336, 1343 (Fed. Cir. 2003) ("The fact that, whether because of administrative error or otherwise, some marks have been registered even though they may be in violation of the governing statutory standard does not mean that the agency must forgo applying that standard in all other cases.").

C. Applicant's Reliance on Case Law is Misplaced

Applicant relies on *Chenery* and *Retail, Wholesale and Dep't Store Union* to support its argument that a change in policy regarding the correct interpretation of section 156(d)(1) cannot be retroactively applied to its PTE Application. Applicant's argument is based on the flawed premise the USPTO has the discretion to accept Applicant's late-filed PTE Application. As noted earlier, precedent is clear: the USPTO's authority under section 156 is limited to the terms of the statute. *See Somerset v. Dudas*, 500 F.3d 1344, 1346 (Fed. Cir. 2007) (consulting the express language of section 156(e)(2) when determining the extent of the USPTO's authority to grant interim patent term extensions). In this case, the USPTO has no statutory authority to grant Applicant's PTE Application because it was not timely filed. If the USPTO's correction of past mistakes regarding the correct interpretation of section 156(d)(1) amounts to a change in policy, the problem is not the denial of PTE applications like Applicant's, the problem is with the existing patents that contain improvidently granted extensions. Congress provided the solution to that problem with the invalidity defense set forth in 35 U.S.C. § 282. It did not authorize the USPTO to accept a late-filed PTE application under any circumstances.

CONCLUSION

Applicant's PTE application is **DENIED**. In light of the dismissal of Applicant's PTE Application, Applicant's Original Petition and Revised Petition are **denied as moot**.

THIS IS CONSIDERED A FINAL AGENCY DECISION.

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

By mail: Mail Stop Hatch-Waxman PTE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450.

By FAX: (571) 273-7755

Telephone inquiries related to this determination should be directed to Mary C. Till at (571) 272-7755.

Robert A. Clarke
Director
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

cc: Office of Regulatory Policy
Food and Drug Administration
10903 New Hampshire Ave., Bldg. 51, Rm 6222
Silver Spring, MD 20993-0002
Attention: Beverly Friedman

RE: PRILOSEC OTC®
FDA Docket No.: FDA-2004-E-0463

APPENDIX 1

U.S. Food and Drug Administration

Department of Health and Human Services

CENTER FOR DRUG EVALUATION AND RESEARCH

Drugs@FDA

FDA Approved Drug Products

Drug Details

Drug Name(s)	PRILOSEC OTC (Brand Name Drug)
FDA Application No.	(NDA) 021229
Active Ingredient(s)	OMEPRAZOLE MAGNESIUM
Company	ASTRAZENECA
Original Approval or Tentative Approval Date	June 20, 2003
Chemical Type	2 New ester, new salt, or other noncovalent derivative 3 New formulation
Review Classification	S Standard review drug

- There are no other OTC drugs with the same Active Ingredient, Strength and Dosage Form/Route
- Approval History, Letters, Reviews, and Related Documents
- Questions and Answers
- Label Information
- FDA Press Release
- Other Important Information from FDA

Products on Application (NDA) #021229

Click on a column header to re-sort the table:

Drug Name	Active Ingredients	Strength	Dosage Form/Route	Marketing	RLD	TE

				Status		Code
PRILOSEC OTC	OMEPRAZOLE MAGNESIUM	EQ 20MG BASE	TABLET, DELAYED RELEASE; ORAL	Over-the-counter	Yes	None

Back to Top | **Back to Previous Page** | **Back to Drugs@FDA Home**

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FDA/Center for Drug Evaluation and Research
Office of Training and Communications
Division of Information Services
Update Frequency: Daily

APPENDIX 2

Questions and Answers on Prilosec OTC (omeprazole)

1. What is FDA announcing today?
2. What is Prilosec OTC used to treat?
3. How does Prilosec OTC work?
4. Will Prilosec OTC work as well as the prescription strength Prilosec?
5. How is Prilosec OTC taken?
6. If Prilosec OTC takes a few days to take effect, can I take more each day to make it work faster?
7. Who should take prescription strength Prilosec rather than Prilosec OTC?
8. Who should NOT take Prilosec OTC?
9. Does Prilosec OTC interact with food or other drugs?
10. How is Prilosec OTC different from the other OTC treatments for heartburn?
11. What are some possible side effects of Prilosec OTC?
12. How can I report a side effect with Prilosec OTC to the FDA?
13. When will Prilosec OTC be available?
14. What if I have other questions about Prilosec OTC?

1. What is FDA announcing today?

The FDA is announcing the approval of Prilosec OTC (omeprazole) as an over-the-counter (OTC) drug product. Until today, Prilosec was available only with a doctor's prescription. FDA originally approved prescription Prilosec in 1989.

2. What is Prilosec OTC used to treat?

Prilosec OTC is used to treat frequent heartburn. Heartburn occurs when the stomach contents back up and out of the stomach into the esophagus (the tube that connects the throat to the stomach). Frequer heartburn is when you have heartburn 2 or more days a week.

Prilosec OTC is not the right medicine for you if you have occasional heartburn, one episode of heartburn a week or less, or if you want immediate relief of heartburn.

It is very important that you carefully read and understand the Prilosec OTC label directions, warnings, and side effects. Most importantly, the label will tell you when you should seek medical attention instead of taking Prilosec OTC.

3. How does Prilosec OTC work?

Prilosec OTC stops the stomach from making acid. This causes less heartburn.

4. Will Prilosec OTC work as well as the prescription strength Prilosec?

Both prescription Prilosec and Prilosec OTC contain the same active ingredient, omeprazole, which effectively stops acid production. Prescription Prilosec treats diseases that require diagnosis and supervision by a doctor. Prilosec OTC treats only symptoms of frequer heartburn. Used as directed, Prilosec OTC will not treat the conditions that prescription Prilosec treats.

5. How is Prilosec OTC taken?

Prilosec OTC is a delayed-release 20mg tablet, taken once a day (every 24 hours) for 14 days before eating. You should not take it for more than 14 days or repeat a 14-day course more often than every 4 months unless directed by a doctor.

Do not crush, break, or chew the tablet. This decreases how well Prilosec OTC works in the body.

6. If Prilosec OTC takes a few days to take effect, can I take more each day to make it work faster?

No. Prilosec OTC is not intended for immediate relief of occasional heartburn. Prilosec OTC may take 1 to 4 days for full effect, although some people get complete relief of symptoms within 24 hours.

7. Who should take prescription strength Prilosec rather than Prilosec OTC?

Although the two products contain omeprazole, prescription Prilosec is for treating conditions such as inflammation of the esophagus (esophagitis), ulcers, and other medical conditions for which a doctor's supervision is needed.

For this reason, stop taking Prilosec OTC and tell your doctor if you:

- are not feeling better and your heartburn continues to worsen
- need to take this product for more than 14 days
- need to take more than 1 course of treatment every 4 months

Prilosec OTC is not appropriate for adults who:

- have only occasional heartburn
- have one episode of heartburn a week or less
- want immediate relief of heartburn

8. Who should NOT take Prilosec OTC?

Do not take Prilosec OTC if you have:

- had an allergic reaction to Prilosec in the past
- trouble or pain swallowing food
- vomiting with blood
- bloody or black stools

9. Does Prilosec OTC interact with food or other drugs?

When you are taking Prilosec OTC, it is especially important that your health care provider know if you are taking any of the following:

- warfarin (blood-thinning medicine)
- prescription antifungal or anti-yeast medicines
- diazepam (anxiety medicine)
- digoxin (heart medicine)

10. How is Prilosec OTC different from the other OTC treatments for heartburn?

There are other OTC drug products used to provide immediate relief fc heartburn. These include antacids and acid reducer drug products suc as Pepcid, Zantac, Tagamet, and Axid. Prilosec OTC should not be confused with these products because it works differently and is not intended for immediate relief.

11. What are some possible side effects of Prilosec OTC?

Although side effects from Prilosec OTC are not common, they can occur. Tell your doctor if any of these symptoms are severe or do not g away:

- headache
- diarrhea
- constipation
- upset stomach
- vomiting
- stomach pain
- cough
- cold symptoms
- dizziness
- rash

12. How can I report a side effect with Prilosec OTC to the FDA?

You can report a side effect the following ways:

- Visit www.fda.gov/medwatch and click on "How to Report"
- Call 1 - 800-FDA-1088
- Fax 1 - 800-FDA-0178

13. When will Prilosec OTC be available?

The company marketing Prilosec OTC makes the decision on availability. For further information, please contact the manufacturer, Procter and Gamble, directly.

14. What if I have other questions about Prilosec OTC?

If you have further questions regarding Prilosec OTC or any medications, please contact the Center for Drug's Division of Drug Information at: 888-INFOFDA (888-463-6332), or email us at: druginfo@fda.hhs.gov.

Back to Top Back to Prilosec OTC Information Page

FDA/Center for Drug Evaluation and Research
Created: June 19, 2003 Updated: July 16, 2003
Originator: OTCOM/DLIS
HTML by SJW, MAU

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)
5,824,389	1998-10-20	08/454,539	1995-05-30	LLC-2249/2D

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

	Fee	Code
◯	3 ½ year	(1551)
◉	7 ½ year	(1552)
◯	11 ½ year	(1553)

Small Entity

	Fee	Code
◯	3 ½ year	(2551)
◯	7 ½ year	(2552)
◯	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

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	/Christopher P. Maiorana/	Date (YYYY-MM-DD)	2007-03-30
Name	Christopher P. Maiorana	Registration Number	42829

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 record s.

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

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

In re Patent No. 5824389
Issue Date: October 20,1998
Application No. 08454539
Filed: May 30,1995
Attorney Docket No. LLC-2249/2D

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed March 30,2007 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 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 March 30,2007 . 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 an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

Telephone inquires related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

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

Paper No. 22

Integrated Silicon Solution, Inc.
1940 Zanker Road
San Jose, CA 95112

COPY MAILED

NOV 13 2008

In re Patent No. 5,731,606	:	
Issue Date: March 24, 1998	:	
Application No. 08/454,750	:	DECISION ON PETITION
Filed: May 31, 1995	:	
Patentee(s): Ritu Shrivastava, et. al.	:	

This is a decision on the renewed petition under 37 CFR 1.182 filed on September 11, 2008, 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.

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

The patent file is being referred to the Files Repository.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3226. Any questions concerning issuance of the duplicate Letters Patent should be directed to Niomi Farmer at (703) 308-9250 ext 119.

Andrea Smith
Petitions Examiner
Office of Petitions

cc: Niomi Farmer, P/OPPD, South Tower 8th Floor, Room C23
FAX No. (571) 270-9753

UNITED STATES PATENT AND TRADEMARK OFFICE

JAN - 2 2008

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov

John W. Hogan
Wyeth
Five Giralda Farms
Madison, NJ 07940

In Re: Patent Term Extension
Application for
U.S. Patent No. 5,529,990

APPLICATION NOT ELECTED

The application for patent term extension for U.S. Patent No. 5,529,990, which claims a method of using the human drug product TYGACIL® (tigecycline), is dismissed.

A Response to Notice of Final Determination and Requirement for Election was filed on December 19, 2007, in each of (i) the application for patent term extension for U.S. Patent No. 5,529,990 and (ii) the application for patent term extension for U.S. Patent No. 5,494,903, which claims the human drug product TYGACIL® (tigecycline) and pharmaceutical compositions of TYGACIL® (tigecycline). Each Response states that "[t]he patentee elects U.S. Patent No. 5,494,903 to extend."

Thus, the application for patent term extension for U.S. Patent No. 5,494,903 was extended based upon the regulatory review period of TYGACIL® (tigecycline). Since only one patent may be extended based upon the regulatory review period of a product, the application for patent term extension for 5,529,990 is dismissed.

A single request for reconsideration of this dismissal of the application for patent term extension may be made if filed within one month of the date of this notice. Extensions of time under 37 CFR § 1.136(a) are not applicable to this time period.

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

By mail: Mail Stop Hatch-Waxman PTE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450.

By FAX: (571) 273-7728

Telephone inquiries related to this determination should be directed to Raul Tamayo at (571) 272-7728.

Mary C. Till
Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

cc: Office of Regulatory Policy
HFD - 7
5600 Fishers Lane (Rockwall II Rm. 1101)
Rockville, MD 20857

Attention: Beverly Friedman

RE: TYGACIL® (tigecycline)
FDA Docket No.: 2006E-0043

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)
5620630	1997-04-15	08456809	1995-06-01	ID 018107 -JLR

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

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	/DJCushing/	Date (YYYY-MM-DD)	2007-03-20
Name	David J. Cushing	Registration Number	28703

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 record s.

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

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

In re Patent No. 5620630
Issue Date: April 15,1997
Application No. 08456809
Filed: June 1,1995
Attorney Docket No. 829-258

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed March 20,2007 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 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 March 20,2007 . 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 an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

Telephone inquires 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)
5679685	1997-10-21	08459021	1995-06-02	2991/19084-U

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

	Fee	Code
○	3 ½ year	(1551)
○	7 ½ year	(1552)
◉	11 ½ year	(1553)

Small Entity

	Fee	Code
○	3 ½ year	(2551)
○	7 ½ year	(2552)
○	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

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	/Mitchell Bernstein/	Date (YYYY-MM-DD)	2010-05-20
Name	Mitchell Bernstein	Registration Number	46550

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

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

In re Patent No. 5679685
Issue Date: October 21,1997
Application No. 08459021
Filed: June 2,1995
Attorney Docket No. 2991/19084-U

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed May 20,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 May 20,2010 . 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

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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CROWELL & MORING
1001 PENNSYLVANIA AVENUE NW
WASHINGTON DC 20004-2500

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APR 27 2006
OFFICE OF PETITIONS

In re Application of :
Grundmann et al. :
Application No. 08/459,044 : ON PETITION
Filed: June 2, 1995 :
Attorney Docket No. 5552.0399-04 :

This is a decision on the petition under 37 CFR §1.181(a) to withdraw the holding of abandonment, filed February 1, 2006.

The petition to withdraw the holding of abandonment is **GRANTED**.

This application became abandoned for failure to timely submit the issue and publication fees, as required by the Notice of Allowance and Fee (s) Due which was mailed February 11, 2005. The Notice of Allowance and Fee (s) Due set a three (3) month statutory period for reply. Extensions of time were not available under the provisions of 37 CFR 1.136(a). Accordingly, this application became abandoned on May 12, 2005. A Notice of Abandonment was mailed on August 5, 2005.

Petitioner asserts that the Notice of Allowance and Fee (s) Due mailed on February 11, 2005 was never received. A review of the record indicates the Notice of Allowance and Fee (s) Due was mailed to an incorrect correspondence address. A change of correspondence address was received in the Office on May 28, 2003. However the change of correspondence address was not entered. Thus the Notice of Allowance and Fee (s) Due was improperly mailed.

This application is being forwarded to Art Unit 1646 for re-mailing of the Notice of Allowance and Fee (s) Due and the Notice of Allowability to the correct correspondence address of record.

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

Charlema R. Grant
Petitions Attorney
Office of Petitions

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

Paper No. 28

TIMOTHY E. TORCHIA
GENENTECH INC.
LEGAL DEPARTMENT - MS 49
ONE DNA WAY
SOUTH SAN FRANCISCO, CA 94080-4990

COPY MAILED

JAN 31 2000

SPECIAL PROGRAMS OFFICE
DAC FOR PATENTS

In re Application of :
PHILLIP W. BERMAN ET AL :
Application No. 08/459,141 :
Filed: June 2, 1995 :
Attorney Docket No. P0233C6 :

ON PETITION

This is a decision on the petition under 37 CFR 1.182, filed by facsimile transmission on May 18, 1999, to correct the attorney data on Issue Fee Transmittal Form PTOL-85(b).

The petition is dismissed as moot in view of the withdrawal of the instant application from issue on December 28, 1999.

If the claims in the application are again found allowable, petitioner may at that time include the correct attorney data on the new Issue Fee Transmittal Form PTOL-85(b).

Any questions concerning this decision on petition may be directed to the undersigned at (703) 305-8680.

This application is being returned to Technology Center 1600 for appropriate action, including notifying applicant of the new status of this application.

Frances Hicks
Lead Petitions Examiner
Office of Petitions
Office of the Deputy Assistant Commissioner
for Patent Policy and Projects

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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JJGJR: 06-04

Paper No: 51

QUINE INTELLECTUAL
PROPERTY LAW GROUP, P.C.
P O BOX 458
ALAMEDA CA 94501

COPY MAILED
JUN 23 2004
OFFICE OF PETITIONS

In re Application of
Berman, et al. :
Application No. 08/459,141 :
Filing Date: 2 June, 1995
Attorney Docket No. 402E-978316US :

This is a decision on the petition filed on 27 January, 2004, under 37 C.F.R. §1.137(b), and alleging abandonment due to unintentional delay.

The Office regrets the delay in addressing this matter.

For the reasons set forth below, the petition as considered under 37 C.F.R.§1.137(b) is **GRANTED**.

BACKGROUND

The record reflects that:

- after filing a Notice of Appeal on 17 June, 2003, Petitioner failed to file timely the Appeal Brief (in triplicate with fee) on or before Monday, 18 August, 2003;
- the application went abandoned by operation of law after midnight 18 August, 2003;
- the Office mailed no Notice of Abandonment before the instant petition was filed;
- the instant petition (with fee) was filed with the Appeal Brief and fee (the reply), a terminal disclaimer and fee, and the statement of unintentional delay;

- Petitioner also filed a request and fee for a five- (5-) month extension of time, which is unnecessary, and the fee ($930.00) is refunded via Deposit Account 50-0893.

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).[1]

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. 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.[2]

Delays in responding properly raise the question whether delays are unavoidable.[3] 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).[4] And the Petitioner must be diligent in attending to the matter.[5] 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] And petitions calling upon the authority of the Commissioner to act, such as that under 37 C.F.R.

---

[1] 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.

[2] 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.

[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] See: In re Application of G, 11 USPQ2d 1378, 1380 (Comm'r Pats. 1989).

[5] See: Diligence in Filing Petitions to Revive and Petitions to Withdraw the Holding of Abandonment, 1124 Off. Gaz. Pat. Office 33 (March 19, 1991). It was and is Petitioner's burden to exercise diligence in seeking either to have the holding of abandonment withdrawn or the application revived. See 1124 Off. Gaz. Pat. Office supra.

[6] 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.

§1.181,[7] require diligence as to their filing–i.e., the petition must be filed within two months of the action complained of.

Allegations as to Unintentional Delay

The requirements of a petition under 37 C.F.R. §1.137(b) are: petition, fee, reply, statement and–if applicable–terminal disclaimer.

Applicable here are the petition, fee, reply, terminal disclaimer and statement requirements, which Petitioner has satisfied.

CONCLUSION

Petitioner has satisfied the requirements under 37 C.F.R. §1.137(b), the petition hereby is **granted**.

The instant application is forwarded to Technology Center 1600 to await the Examiner's Answer.

---

[7] The regulations at 37 C.F.R. §1.181 provide:

§ 1.181 Petition to the Commissioner.

(a) Petition may be taken to the Commissioner:

(1) From any action or requirement of any examiner in the *ex parte* prosecution of an application, or in the *ex parte* or *inter partes* prosecution of a reexamination proceeding which is not subject to appeal to the Board of Patent Appeals and Interferences or to the court;

(2) In cases in which a statute or the rules specify that the matter is to be determined directly by orreviewed by the Commissioner; and

(3) To invoke the supervisory authority of the Commissioner in appropriate circumstances. For petitions in interferences, see § 1.644.

(b) Any such petition must contain a statement of the facts involved and the point or points to be reviewed and the action requested. Briefs or memoranda, if any, in support thereof should accompany or be embodied in the petition; and where facts are to be proven, the proof in the form of affidavits or declarations (and exhibits, if any) must accompany the petition.

(c) When a petition is taken from an action or requirement of an examiner in the *ex parte* prosecution of an application, or in the *ex parte* or *inter partes* prosecution of a reexamination proceeding, it may be required that there have been a proper request for reconsideration (§ 1.111) and a repeated action by the examiner. The examiner may be directed by the Commissioner to furnish a written statement, within a specified time, setting forth the reasons for his or her decision upon the matters averred in the petition, supplying a copy to the petitioner.

(d) Where a fee is required for a petition to the Commissioner the appropriate section of this part will so indicate. If any required fee does not accompany the petition, the petition will be dismissed.

(e) Oral hearing will not be granted except when considered necessary by the Commissioner.

(f) 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. Any petition under this part not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely, except as otherwise provided. This two-month period is not extendable.

(g) The Commissioner may delegate to appropriate Patent and Trademark Office officials the determination of petitions.

[24 Fed. Reg. 10332, Dec. 22, 1959; 34 Fed. Reg. 18857, Nov. 26, 1969; paras. (d) and (g), 47 Fed. Reg. 41278, Sept. 17, 1982, effective Oct. 1, 1982; para. (a), 49 Fed. Reg. 48416, Dec. 12, 1984, effective Feb. 11, 1985; para. (f) revised, 65 Fed. Reg. 54604, Sept. 8, 2000, effective Nov. 7, 2000; paras. (a) and (c) revised, 65 Fed. Reg. 76756, Dec. 7, 2000, effective Feb. 5, 2001]

Telephone inquiries concerning this decision may be directed to the undersigned at (703) 305-9199.

John J. Gillon, Jr.
Senior 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

Paper No. 28

FREDERICK B ZIESENHEIM
700 KOPPERS BUILDING
436 SEVENTH AVENUE
PITTSBURGH PA 15219-1818

COPY MAILED

APR 0 2 2007

OFFICE OF PETITIONS

In re Patent No. 5,846,138
Issue Date: December 8, 1998
Application No. 08/459,417
Filed: June 2, 1995
Patentee: **BORDEN**, Fred et al.

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.378(c), filed February 7, 2007, to accept the delayed payment of a maintenance fee for the above-identified patent.

The petition is **DISMISSED** since the petition is not signed by an attorney or agent registered to practice before the Patent and Trademark Office, the patentee, or the assignee or other party in interest as established by 37 CFR 3.73(b). The petition is signed by one of the three joint inventors.

37 CFR 1.33(b) states that "[a]mendments and other papers filed in the application 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 undivided 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." Emphasis added

Further, a petition to accept the unintentionally delayed payment of a maintenance fee under 35 U.S.C. § 41(c) and 37 CFR 1.378(c) must be accompanied by: (1) a statement that the delay was unintentional; (2) payment of the appropriate maintenance fee, unless previously submitted; (3) payment of the surcharge set forth in 37 CFR 1.20(i)(2). Since the petition is not signed by an attorney or agent registered to practice before the Patent and Trademark Office, the patentee, or the assignee or other party in interest as established by 37 CFR 3.73(b), the statement of unintentional delay cannot be accepted.

If reconsideration of this decision is desired, a properly signed petition for reconsideration under 37 CFR 1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. No

extension of this 2-month time limit can be granted under 37 CFR 1.136(a) or (b). Any such petition for reconsideration must be accompanied by the petition fee of $400 as set forth in 37 CFR 1.17(f).

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

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

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

The centralized facsimile number is **(571) 273-8300**.

Any questions concerning this matter may be directed to Monica A. Graves at (571) 272-7253.

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
www.uspto.gov

BUCKINGHAM, DOOLITTLE & BURROUGHS, LLP
3800 EMBASSY PARKWAY, SUITE 300
AKRON OH 44333-8332

COPY MAILED

OCT 25 2007

OFFICE OF PETITIONS

In re Patent No. 5,846,138 :
Issue Date: December 8, 1998 :
Application No. 08/459,417 :
Filed: June 2, 1995 :
Attorney Docket No. **951008** :

DECEISION ON PETITION

This is a decision on the renewed petition under 37 CFR 1.378(c), filed May 11, 2007, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED.**

This patent expired at midnight December 8, 2006 for failure to pay the 7½ year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

It is noted that a $1,640 surcharge and $1,150 maintenance fee was paid with the original petition filed on February 7, 2007. In view of petitioner's notification of loss of small entity status, the fee required for the 8½ year maintenance fee is deficient by $1,150. Accordingly, the $3,940 fees paid with the present petition created an overpayment of fees. Therefore, the $400 fee required under 37 CFR 1.17(f), and the $1,150 balance of the maintenance fee will be deducted from the $3,940, and the fees overpaid of $2,390 will be credited to counsel's deposit account.

Receipt is acknowledged of the Revocation and Power of Attorney filed May 11, 2007. However, petitioner should note that the mere filing of a power of attorney and/or a change of correspondence address will not affect the fee address. Therefore, if petitioner desires to receive future correspondence regarding any Maintenance Fee Reminder which may be mailed regarding maintenance fees for the above-identified patent, the "fee address" and/or "customer number" forms should be submitted.

Status as a small entity has been removed.

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

The patent file is being forwarded to Files Repository.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Paper No. 20

THOMAS J. SCOTT, JR.
HUNTON & WILLIAMS
1900 K STREET, N.W.
12TH FLOOR
WASHINGTON, D.C. 20006

COPY MAILED

FEB 16 2001

OFFICE OF PETITIONS
A/C PATENTS

In re Application of
John C. Harvey et al.
Application No. 08/459,522
Filed: June 2, 1995
Attorney Docket No. 05634.0238

NOTICE

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**.

Inquiries related to this communication should be directed to the Office of Petitions Staff at (703) 305-9285.

This file is being forwarded to Technology Center 2600.

Irvin Dingle
Petitions Examiner
Office of Petitions
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

MARY J. WILSON
NIXON & VANDEHHE, P.C.
1100 NORTH GLEBE ROAD
8TH FLOOR
ARLINGTON VA 22201-4714

COPY MAILED
AUG 0 4 2006
OFFICE OF PETITIONS

In re Application of :
Gorman, et al. :
Application No. 08/459,655 : DECISION ON PETITION
Filed: June 2, 1995 : TO WITHDRAW
Attorney Docket No. 2035-9 : 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 February 24, 2006.

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 Mary J. Wilson on behalf of all attorneys of record.

Applicant is reminded that there is no attorney of record at this time.

The request to change the correspondence of record is not acceptable as the requested correspondence address is not that of: (1) the first named signing inventor; or (2) an intervening assignee of the entire interest under 37 C.F.R 3.71. 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 April Wise at 571-272-1642.

David Bucci
Petitions Examiner
Office of Petitions

cc: Glaxo Wellcome Inc.
Intellectual Property Department
Five Moore Drive
Research Triangle Park, NC 27709

cc: FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER LLP
901 NEW YORK AVENUE, NW
WASHINGTON, DC 20001-4413

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 7/21/09

TO SPE OF : ART UNIT 3641- John Eldred

SUBJECT : Request for Certificate of Correction for Appl. No.: 08/460,218 t No.: 7,500,433---

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)
South Tower - 9A22
Palm Location 7580

Should the change Be made?

RoChaun Johnson
Certificates of Correction Branch
703 756-1572

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**

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)
5740647	1998-04-21	08460404	1995-06-01	JPS951096US

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

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	/Keith J. Murphy/	Date (YYYY-MM-DD)	2010-06-08
Name	Keith J. Murphy	Registration Number	33979

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

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

In re Patent No. 5740647
Issue Date: April 21,1998
Application No. 08460404
Filed: June 1,1995
Attorney Docket No.

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed June 8,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 June 8,2010 . 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)
5712144	1998-01-27	08460521	1995-06-02	P/4960-174 (V15082)

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

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	/robert c faber/	Date (YYYY-MM-DD)	2010-03-24
Name	Robert C. Faber	Registration Number	24322

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

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

In re Patent No. 5712144
Issue Date: January 27,1998
Application No. 08460521
Filed: June 2,1995
Attorney Docket No. 1781-115P

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed March 24,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 March 24,2010 . 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.

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)
5585036	1996-12-17	08461377	1995-06-05	DISP-001500US

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

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	/Don D. Cha/	Date (YYYY-MM-DD)	2009-03-05
Name	Don D. Cha	Registration Number	40945

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 record s.

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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In re Patent No. 5585036
Issue Date: December 17,1996
Application No. 08461377
Filed: June 5,1995
Attorney Docket No. 5-94A

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed March 5,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 March 5,2009 . 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)
5560733	1996-10-01	08461437	1995-06-05	

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

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	/Peter Ganjian/	Date (YYYY-MM-DD)	2009-07-29
Name	PETER GANJIAN	Registration Number	43991

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:

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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)).

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In re Patent No. 5560733
Issue Date: October 1,1996
Application No. 08461437
Filed: June 5,1995
Attorney Docket No. 2102

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed July 29,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 July 29,2009 . 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.

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DEC 12 2003

CAROL A. EIGNER
HAMILTON, BROOK, SMITH & REYNOLDS, P.C.
530 VIRGINIA ROAD
P/ O/ BOX 9133
CONCORD, MA 01742-9133

In re Application of	:
Robert C. Seid, Jr., et al	:
Serial No.: 08/461,651	: PETITION DECISION
Filed: June 5, 1995	:
Attorney Docket No.: 1646.1007-022	:

This is a decision on the petition filed July 31, 2003, under 37 CFR 1.144, requesting withdrawal of a supplemental restriction requirement.

BACKGROUND

A review of the file history shows that this application was filed June 5, 1995, under 35 U.S.C. 111 as a Divisional application of SN 08/204,808, filed February 15, 1994, which is a Continuation of SN 07/691,005, filed August 22, 1991. Upon filing claims 1-58 were canceled by preliminary amendment and claims 59-67 were added. On August 15, 1996, claims 68-80 were also added.

On February 12, 1997, the original examiner mailed a restriction requirement to applicants dividing the claims into five groups, as follows:

> Group I, claims 59-62 and 65-67, drawn to recombinant organisms;
> Group II, claims 63-64, drawn to mutant Nesseria strains;
> Group III, claim 65, drawn to recombinant Nesseria strain;
> Group IV, claims 68-77, drawn to nucleic acid, host cells, nucleic acid vector, expression vectors; and
> Group V, claims 78-80, drawn to a method for producing a protein.

The examiner provided appropriate reasoning for insisting on restriction and also required an election of species for certain claims.

On April 17, 1997, applicants replied to the restriction requirement by electing Group I for prosecution and traversing the requirement arguing that Groups I-III should be combined as one

Group and Groups IV-V should also be one Group. In addition, a petition under 37 CFR 1.129(b) requesting that all Groups be examined was filed and authorized charging of the appropriate fees for each additional invention. Inadvertently the application was abandoned due to Office failure to correlate the submitted reply with the file, the abandonment being withdrawn upon discovery of the missing papers.

On June 12, 1998, a decision on the above filed petition was mailed by the Group Director in which the five Groups were reduced to two Groups, as suggested by applicants, and applicants were provided an opportunity to pay the fees for examination of the additional Group under 37 CFR 1.129(b) and 1.17(s). Such fees were then charged to applicants' Deposit Account, as directed.

Due to retirement of the original examiner, a new examiner was assigned the application. The examiner mailed a first Office action on the merits to applicants on January 21, 1999, examining claims 59-80. All claims were rejected under one or more of 35 U.S.C. 101 for non-statutory subject matter, 35 U.S.C. 112, second paragraph, for indefiniteness, 35 U.S.C. 112, first paragraph, for non-enablement or lack of written description, 35 U.S.C. 102(a) or (b), as anticipated. or under 35 U.S.C. 103(a), as obvious, over various prior art references.

Applicants replied on July 21, 1999 (Certificate of Mailing date), with a request for a three month extension of time and fee therefor, and with numerous amendments to the specification and cancellation of claims 63-64, 68-69, 72-73 and 76–80, amendment of claims 59-60, 62, 65-67 and 70-71, and addition of claims 81-93. Arguments regarding each of the rejections were also set forth.

On October 14, 1999, the examiner mailed a Final Office action to applicants in which claims 82-83 were indicated as allowable. Claims 59, 61, 66-67, 81 and 86-93 were rejected under 35 U.S.C. 112, second paragraph, as indefinite; claims 59-62, 65 , 81 and 86-91 were rejected under 35 U.S.C. 112, first paragraph, as non-enabled or not described in the specification; claims 90-93 were rejected under 35 U.S.C. 102(a) as anticipated over Barlow et al (C) and under 35 U.S.C. 102(b) as anticipated over Barlow et al (A) and (B). Claims 66-67, 70-71, 74-75 and 84-85 were objected to for various reasons, but indicated allowable if amended.

Applicants replied on January 24, 2000 (Certificate of Mailing Date), proposing amendments to claims 59-60, 62, 65-67, 70-71, 81 and 84-93. The examiner mailed an Advisory action to applicants on May 24, 2000, denying entry of the amendment based on broadening of the claims requiring further consideration or search. On January 19, 2000, a Notice of Appeal was filed.

On August 18, 2000, applicants filed a request for continued prosecution under 37 CFR 1.129(a) with the requisite extension of time and filing fees. Concurrently applicants filed new informal drawings and a new sequence listing and an amendment to the specification to insert sequence identifiers and amendments to claims 59-60, 62, 65-67, 70-71, 74-74 and 81-93; claims 94-102 were added.

On November 7, 2000, the examiner mailed a non-final Office action to applicants indicating claims 60, 65-67, 70-71, 74-75 and 82-85 were allowed. Claims 100-101 were withdrawn from

consideration as directed to a non-elected invention. The examiner maintained the rejection of claims 90-91 and 93 under 35 U.S.C. 102(a) as anticipated by Barlow et al (C). The rejection of claims 90-91 and 93 under 35 U.S.C. 102(b) over Barlow et al (A) and (B) as anticipated was also maintained. Claims 59, 61-62, 81, 86-91 and 94-99 were rejected under 35 U.S.C. 112, first paragraph, as lacking description in the specification Claims 92 and 102 were rejected under 35 U.S.C. 103(a) as obvious over Barlow et al(C).

Applicants participated in a personal interview on May 2, 2001, and filed a reply to the Office action on May 7, 2001 (Certificate of Mailing date), in which claims 90-91 and 100-101 were canceled, claims 59-60, 62, 81, 86-89, 92-94 and 96 were amended and claims 103-123 were added. All rejections were replied to in an appropriate manner. A further amendment was filed August 7, 2001, providing formal drawings. A supplemental amendment filed May 7, 2001, also added claims 124-130.

On January 9, 2002, the examiner mailed a non-final Office action to applicants indicating claims 65-67, 93 and 107 as allowable. Claims 60, 62 and 119-130 were rejected under 35 U.S.C. 112, first paragraph, as lacking enablement or description in the specification. Claims 59, 70-71, 74-75, 82, 84, 94-95, 108-109, 115-118 and 124-130 were rejected under 35 U.S.C. 112, second paragraph, as indefinite. Claims 85 was rejected under 35 U.S.C. 102(a) as anticipated by Carbonetti et al (873), and under 35 U.S.C. 102(e) as anticipated by Carbonetti (361). Claim 83 was rejected under 35 U.S.C. 102(b) as anticipated by Barlow K. Claim 81 was rejected under 35 U.S.C. 102(b) as anticipated by Barlow et al (A) or (C) and under 35 U.S.C. 102(a) as anticipated by Barlow et al (B). Claims 70, 74, 82-83, 86-89, 92, 102-103, 105, 110-112 and 114 were rejected under 35 U.S.C. 102(a) as anticipated by Barlow et al (B). Claims 81, 92, 102-103, 105 and 119-126 were rejected under 35 U.S.C. 102(e) as anticipated by Carbonetti et al. Claims 59, 61, 104, 106, 110, 113 and 119-126 were rejected under 35 U.S.C. 103(a) as obvious over Carbonetti et al, Barlow et al (B) or (C) and Poolman et al and Paradiso et al in various combinations.

Applicants replied on July 8, 2002, by providing an affidavit under 37 CFR 1.132, by amending the specification, canceling claims 70-71, 74-75, 92 and 124-126, amending claims 59-60, 62, 81, 85, 87, 89, 96, 102-108, 110, 115-123 and 127-130 and adding claims 131-153. Appropriate arguments of all the rejections were made.

On November 19, 2002, the examiner mailed a Final Office action to applicants indicating claims 62, 65-67, 82-89, 93, 96-99, 104, 106-109, 115-118 and 139 as allowable. Claims 132-133 and 142-148 were withdrawn from consideration as directed to inventions not under examination. The rejections of the previous Office action of claims 59 and 61 under 35 U.S.C. 103(a) were maintained. The rejection of claims 127-130 under 35 U.S.C. 112, first paragraph, as non-enabled, was maintained. A new rejection of claims 102-103, 110-114, 119-123, 140-141 and 153 under 35 U.S.C. 112, first paragraph, as lacking written description, was made. A new rejection of claims 59, 61, 81, 94-95, 102-103, 105, 110-114, 119-123, 131, 134-136, 140-141 and 149-153 under 35 U.S.C. 112, second paragraph, as indefinite, was made. Claims 59, 60, 81 and 119-121 were rejected under 35 U.S.C. 103(a) as obvious over Poolman et al, Carbonetti et al and Barlow et al (C), as previously combined.

A personal interview was held on November 21, 2002, for which both the examiner and applicants have provided summaries. An Advisory Action, mailed January 29, 2003, noted applicants' Interview Summary submission. Proposed new formal drawings with corrections and new sequence listings were filed January 7, 2003, but were not noted in the Advisory Action. A second Notice of Appeal was filed on March 4, 2003.

On July 31, 2003, applicants filed a second submission under 37 CFR 1.129(a) accompanied by the required extension of time fees and filing fees. The submission cancels claims 59, 61, 83 and 122 and amends claims 81, 86, 88, 94, 102-106, 110, 119-121, 123, 131-136, 140-141, 149, 151 and 153. Accompanying the submission is a petition from requirement for restriction under 37 CR 1.144. The petition requests that claims 132-135 and 142-148 be examined as they are not distinct or independent from the inventions of the claims under consideration.

DISCUSSION

As of the Final Office action mailed November 29, 2002, claims 59-62, 65-67, 81-89, 93-99, 102-123 and 127-153 were pending. Of these, claims 59, 61, 83 and 122 have been canceled with the submission under 37 CFR 1.129(a). Claims 95, 97-99, 109, 111-114, 137, 139, 150 and 152 are dependent claims; all other claims are independent and are directed to recombinant organisms expressing specific peptides (identified by SEQ ID No.) of *Neisseria*, fusion proteins and epitopes thereof, or isolated nucleic acids having specific SEQ ID Nos or fragments thereof in host cells such as E. Coli, Salmonella, yeast, etc. The method of producing the proteins is also claimed.

The original restriction requirement, as modified by the petition decision mailed June 12, 1998, required election between recombinant and mutant microorganisms (mutant organisms no longer appear to be claimed) and the nucleic acids, vectors, host cells and methods of producing the outer membrane protein. The petition decision directed applicants to make an election, but permitted applicants to pay additional fees to have all of the inventions examined. Although this petition decision was flawed in that it was a) premature as the requirement for restriction was not a Final requirement as the examiner had not had an opportunity to reconsider the original restriction requirement and modify it in view of applicants' arguments, and b) permitted applicants to pay for additional inventions under 37 CFR 1.129(b)(1) which, in view of this application being a Divisional application and restriction of the same subject matter having previously been made, was a misinterpretation of the rule, the examiner, nevertheless, proceeded according to the petition decision and examined both claimed inventions upon payment of the additional fee and such prosecution activity will not now be disturbed.

This application, as originally filed, did not include SEQ ID Nos for each of the sequences identified in the application. Such identifiers were added later and a proper CRF diskette and paper copy of all sequences in the application were provided. During the prosecution of the application the examiner searched those sequences set forth in the claims, as disclosed. Claims 132-135 and 142-148 were added in the last amendment prior to filing of the second request under 37 CFR 1.129(a). These claims are directed to specific fragments of sequences, rather than the entire sequence and are thus outside the scope of the claims as originally filed and prosecuted. Thus the examiner held them to be non-elected.

Applicants argue that the claims held withdrawn fall within the original restriction requirement in the grandparent application, set forth December 21, 1992, in light of which the original restriction requirement in this application was modified in the petition decision so as to be in conformance with that set forth in the grandparent application. Applicants' arguments are, in general, correct in this aspect. Applicants also point out that the examiner has given no specific reason for withdrawing these claims from prosecution. (The original examiner provided adequate reasons for restriction.) Applicants' arguments with respect to the effect the filing of a new application would have on patent term is not well taken as applicants have had several opportunities to place this application in condition for allowance (claims have been indicated allowable in several Office actions), and have not taken the opportunity to do so, but have continued to amend and add additional claims. Claims currently present in the application appear to have little in common with those originally prosecuted other than the specific area of subject matter claimed.

In view of the above, the examiner will be directed to reconsider the withdrawal of claims to a non-elected invention in view of the claims as originally presented, and in accordance with the following guidelines concerning the claims added at a later date:

> Sequences as originally presented in the claims will continue to define the elected invention;
>
> Sequences which have been added to the claims during prosecution and which have been determined to be within the scope of the originally elected invention and which have been examined will continue to be examined;
>
> Sequences which have been added to the claims and have not as yet been examined will be carefully reviewed to determine if they fall within the scope of the sequences already examined; failure to fall within the scope of the sequences already examined may lead to withdrawal from examination based upon election by original presentation. Note that alteration of an examined sequence is considered to constitute presentation of a new sequence which will be carefully reviewed in light of the above criteria to determine if it falls within the scope of the already examined sequences.

DECISION

Applicant's petition under 37 CFR 1.144 is **GRANTED** to the extent indicated above.

The application will be forwarded for proper entry of the papers filed under 37 CFR 1.129(a) and then to the examiner for further consideration.

Should there be any questions with respect to this decision, please contact William R. Dixon, Jr., by mail addressed to: Director, Technology Center 1600, Washington, D.C. 20231, or by telephone at (703)308-3824 or by facsimile transmission at (703) 305-7230.

Jasemine C. Chambers
Director, Technology Center 1600

PTO/SB/66 (03-09)
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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)
5536454	1996-07-16	08462054	1995-06-05	JLR

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

	Fee	Code
○	3 ½ year	(1551)
○	7 ½ year	(1552)
◉	11 ½ year	(1553)

Small Entity

	Fee	Code
○	3 ½ year	(2551)
○	7 ½ year	(2552)
○	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

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	/DJCushing/	Date (YYYY-MM-DD)	2009-09-14
Name	David J. Cushing	Registration Number	28703

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.**

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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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In re Patent No. 5536454
Issue Date: July 16,1996
Application No. 08462054
Filed: June 5,1995
Attorney Docket No. MIJU:010-1/T

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed September 14,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 September 14,2009 . 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.

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Alexandria, VA 22313-1450
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JAN 11 2006

MILLEN, WHITE, ZELANO & BRANIGAN, P.C.
2200 CLARENDON BLVD.
SUITE 1400
ARLINGTON VA 22201

In re Application of	:	
Gary D. Hogden et al	:	
Serial No.: 08/462,703	:	PETITION DECISION
Filed: June 5, 1995	:	
Attorney Docket No.: SCH-1309-C03	:	

This is a decision on applicants' request for a one month Extension of Time under 37 CFR 1.136(b) filed on December 28, 2005.

The Request is **GRANTED**.

Patent Owner's due date for filing a reply to the Office action mailed December 6, 2005, is extended by ONE MONTH to February 6, 2006, in order to allow the Office sufficient time to consider a petition relating thereto and render a decision thereon.

William R. Dixon, Jr.
Special Program Examiner
Technology Center 1600

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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JAN 30 2006

MILLEN, WHITE, ZELANO & BRANNIGAN, pc
2200 CLARENDON BLVD.
SUITE 1400
ARLINGTON, VA 22201

In re Application of	:
Gary D. Hogden et al	:
Serial No.: 08/462,703	: PETITION DECISION
Filed: June 5, 1995	:
Attorney Docket No.: SCH1309-C1	:

This is in response to the petition under 37 CFR 1.181, filed December 28, 2005, requesting reversal of an examiner's actions under 37 CFR 1.129(b).

BACKGROUND

A careful review of the file history shows that this application was filed on June 5, 1995, and claims priority to March 2, 1992, and thus qualifies for continuing procedures under 37 CFR 1.129(a).

The application, as filed contained claims 1-27 and claims 28-41 added by preliminary amendment on the date of filing. Independent claim 1 is directed to a method of avoiding bleeding problems associated with administering of estrogen by administering antiprogestin. Independent claim 21 is to a kit containing a months supply of estrogen and antiprogestin tablets. Independent claim 25 is directed to a pharmaceutical composition comprising estrogen and antiprogestin. Independent claim 28 is direted to hormone replacement therapy or fertility control by administering estrogen and antiprogestin. Independent claim 35 is to a method of fertility control using progestin and antiprogestin. The examiner determined that no restriction of the claims was needed and acted on the merits in an Office action mailed September 12, 1995, in which claims 28-31 were rejected under 35 U.S.C. 112, first paragraph for lack of enablement and claims 1-24 and 26-27 were rejected under 35 U.S.C. 112, second paragraph, for indefiniteness. Claims 1-41 were also identified as being in conflict with claims 1-41 of application SN 08/462,705 and claims 28-41 were further rejected under 35 U.S.C. 101 for double patenting.

Applicants replied on December 26, 1995, canceling claims 28-31, but taking no other action. The examiner mailed a Notice of Abandonment to applicants on April 16, 1996, holding the application abandoned for failure to reply to all outstanding issues. A petition for revival under 37 CFR 1.137(b) was filed May 8, 1996, along with a reply to the Office action in which claims 42-81 were added and a request under 37 CFR 1.129(a) was filed. By decision mailed June 21, 1996, the application was revived in view of the amendment, however the filing under 37 CFR

1.129(a) was dismissed as improper as the application was not under Final rejection. A supplemental amendment under 37 CFR 1.115 was filed July 19, 1996, which canceled claims 1-27, added claims 82-107 and further amended claims 42 and 48-49. Applicants, however, identify only claims 42-107 as being present in the application. Independent claim 42 is directed to a method of hormone replacement therapy or contraception by administering estrogen, progestin and antiprogestin to ameliorate uterine bleeding control. Independent claim 49 is directed to administering progestin and antiprogestin to ameliorate uterine bleeding control. Independent claims 56, 61, 67, 72, 77 and 82 are to a method of hormone replacement therapy by administering estrogen and antiprogestin to inhibit bleeding and other conditions. Independent claim 102 is to a kit containing estrogen and progestin and antiprogestin containing tablets. Independent claim 104 is to a pharmaceutical composition comprising estrogen, progestin and antiprogestin. A supplemental amendment on March 4, 1997, canceled claims 32-41.

The examiner mailed a Final Office action to applicants on March 17, 1997, rejecting claims 42-55 and 102-107 under 35 U.S.C. 103(a) as unpatentable over Hogden in view of Black. Claims 556-81 were rejected for obvious double patenting over US 5,468,736. Claims 42-107 were indicated as conflicting with claims 42-107 of SN 08/462,705 and a request was made to eliminate the overlapping claims from one of the applications. Applicants replied by filing a Notice of Appeal on September 17, 1997.

Applicants filed a formal reply on April 17, 1998, amending claims 42 and 49, and requesting a first reopening of prosecution under 37 CFR 1.129(a). The examiner mailed a non-Final Office action to applicants on June 9, 1998, again rejecting claims 42-55 and 102-107 under 35 U.S.C. 103(a) as unpatentable over Hogden in view of Black. Claims 56-81 were rejected for obvious double patenting on US 5.468,736 and claims 42-107 were deemed to be in conflict with claims 42-107 of SN 08/462,705 again.

Applicants replied on December 9, 1998, noting that the patent over which the obvious double patenting rejection was made was not commonly owned and a terminal disclaimer was not appropriate. Applicants also offered a brief explanation as to why the claims of this application and SN 08/462,705 (and also SN 08/115,008) were being allowed to remain in conflict with US 5,468,736 (and also US 5,516,769, US 5,622,943, and US 5,439,913). No amendments were made.

The examiner mailed a new non-Final Office action to applicants on March 4, 1999, setting forth the same rejections as before, changing only the claim numbers to which the obvious double patenting rejection applied to claims 42-46, 56-81, 94 and 98-99. Applicants replied on September 9, 1999, making only a brief argument with respect to the rejection under 35 U.S.C. 103(a).

The examiner mailed a Final Office action to applicants on December 6, 1999, repeating all of the rejections and objections of the previous Office action and responding to applicants' brief arguments properly. Applicants filed a Notice of Appeal on June 6, 2000. Applicants then filed a second request under 37 CFR 1.129(a) on January 8, 2001, along with a formal reply to the last Office action. A telephonic interview was held with an examiner newly assigned to the application on February 20, 2001.

The new examiner mailed a non-Final Office action to applicants on May 22, 2001, setting forth the same rejections and objections for the same reasons as in the previous Final Office action of December 6, 1999. Applicants replied on November 21, 2001, by responding to each rejection and objection in the same manner as previously. No new arguments were offered.

The examiner mailed an Office action to applicants on March 5, 2002, setting forth a restriction requirement between claims 42-101 and claims 102-107, method of use and composition/product claims. The examiner also set forth various election of species requirements with respect to the two groups. Applicants, in filing a reply on June 13, 2002, while complying with the requirements of the Office action, protested that the imposition of a restriction requirement was improper for various reasons. Applicants also indicated that interference proceedings were in preparation between this application and US 5,622,943 and US 5,468,736.

The examiner mailed a non-Final Office action to applicants on October 3, 2002, indicating that applicants' election was incomplete in that no election of species was made. Applicants replied on December 3, 2002 by formalizing the election of species and continuing the traversal previously set forth.

The examiner mailed a non-Final Office action to applicants on April 28, 2003, responding to applicants' traversal, but maintaining the requirement and rejecting claims 49-50 and 55 under 35 U.S.C. 102(e) over Hogden. Applicants replied on May 22, 2003, requesting that an interference be instituted.

The examiner mailed a new Office action to applicants on October 27, 2004, rejecting claims 49-50 and 55 under 35 U.S.C. 112, second paragraph, as indefinite and claim 49 for obvious double patenting over US 5,622,943. Applicants replied on April 17, 2005, responding to each of the rejections.

An Office action was mailed to applicants on December 6, 2005, setting forth requirements for suggesting an interference and setting a time period of one month, not extendable under 37 CFR 1.136(a), for compliance. Applicants filed a supplemental amendment on December 28, 2005, a request for a one month extension of time under 37 CFR 1.136(b) (which has been granted) and this petition. The supplemental amendment cancels claims 77-81 and 106-107 and adds claims 108-134. Independent claim 108 is directed to a method of avoiding bleeding problems associated with administration of estrogen and antiprogestin. Independent claim 128 is directed to a kit containing estrogen/progestin tablets and an antiprogesstin tablet. Independent claim 132 is to a pharmaceutical composition containing estrogen, progestin and antiprogestin. The added claims are indicated as being identical to the originally presented claims.

DISCUSSION

Applicants' petition is directed to application of 37 CFR 1.129(b)(1) and (2). Part (1) of the rule states that no requirement for restriction shall be made in an application pending on June 8, 1995, which has been pending for at least three years (including claims of priority to parent applications) except where (A) the requirement was made in this or an earlier application prior to

April 8, 1995, (B) the requirement could not have been made due to actions by applicant, or (C) the fees have not been paid for examination of additional inventions. Part (2) or the rule permits applicants to pay additional fees for examination of additional inventions following the imposition of a proper restriction requirement.

As this application was filed prior to June 8, 1995, and claims priority to applications filed in March, 1992, more than three years earlier, the provisions of 37 CFR 1.129(b) apply. Applicants have availed themselves of the provisions of 37 CFR 1.129(a) by twice filing a request to reopen prosecution following a Final Office action and have thus exhausted any further remedy thereunder. Following the second reopening of prosecution the second examiner set forth a restriction requirement and an election of species requirement. The requirement was based on claims which were virtually unamended since the reply to the first Office action was filed. The requirement divided method of use claims from composition and kit claims. The election of species was directed to selecting among various protocols of administration present in the claims. However, 37 CFR 1.129(b) essentially prohibits making a restriction requirement among such pending claims, or, if one is made, permits applicants to pay additional fees to have all inventions examined.

Applicants petition requests the Office to take appropriate action in view of the above rule and circumstances surrounding prosecution of this application. Based on the prosecution history where the first examiner concluded that all claims were related to each other and not directed to independent and distinct inventions and the second examiner initially did the same, it is concluded that the restriction requirement imposed on applicants, as well as the election of species requirement, were improper. It is Office policy that a set of claims which has been prosecuted together and to which no substantive amendments have been made should not at a later date be divided into separate inventions. Such amounts to imposing duplication of effort on the Office as well as applicants. In view of the above, the restriction requirement is withdrawn as improper.

DECISION

The petition is **GRANTED**. **The restriction requirement imposed by the examiner is withdrawn. All claims will be examined and are considered subject to any rejections set forth in the Office action mailed May 22, 2001, which have subsequently not been indicated as being overcome.**

However, in view of the length of prosecution of this application and applicants' request for an interference proceeding to be instituted, applicants will remain under obligation to reply to the Office action mailed December 6, 2005, within the time period, as extended, set.

Should there be any questions about this decision please contact William R. Dixon, Jr., by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0519 or by facsimile sent to the general Office facsimile number, 571-273-8300.

Bruce M. Kisliuk
Director, Technology Center 1600

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Paper No. 47

PERKINS COIE LLP
PO BOX 2168
MENLO PARK CA 22918

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APR 0 2 2003

OFFICE OF PETITIONS

In re Application of
West, et al.
Application No. 08/463,404
Filed: June 5, 1995
Attorney Docket No. 38797.8005.US12

DECISION ON PETITION

This is a decision on the petition filed on November 1, 2002, pursuant to 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 file an Appeal Brief. A final Office action was mailed on March 1, 2001. This Office action set a shortened statutory period for reply of three months. On August 3, 2001, applicant replied with an amendment, made timely by purchasing a two month extension of time and including a Certificate of Mailing dated August 1, 2001. However, the examiner determined that the amendment failed to place the application in condition for allowance. Applicant purchased an additional one month extension of time and filed a Notice of Appeal on September 7, 2001.[1] Accordingly, applicant had two months from this date to file an Appeal Brief in triplicate. No Appeal Brief having been received, the above-identified application became abandoned on November 8, 2001. A Notice of Abandonment was mailed on October 29, 2002.

With the instant petition, petitioner filed a request for a continued prosecution application (CPA) of the above-identified application under 37 CFR 1.53(d). Because an earlier CPA was filed on or after May 29, 2000[2], the instant request for a CPA is being treated as a Request for Continued Examination (RCE) under 37 CFR 1.114.

Petitioner has met all other requirements for a grantable

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[1] The Notice of Appeal was made timely by including a Certificate of Mailing dated September 4, 2001 and by the fact that September 1st, 2nd, and 3rd fell on a Saturday, Sunday, and federal holiday, respectively.

[2] Applicant filed an earlier CPA on December 21, 2000.

petition under 37 CFR 1.137(b). Petitioner paid the petition fee and made the proper statement of unintentional delay under 37 CFR 1.137(b)(3).

The Power of Attorney by Assignee, filed on March 17, 2003, has been entered. Future correspondence concerning this application will be mailed to the above address of record.

The application file is being forwarded to Technology Center 1600 for processing of the RCE, filed November 1, 2002.

Telephone inquiries concerning this decision should be directed to the undersigned at (703)305-0272.

Cliff Congo
Petitions Attorney
Office of Petitions

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GILBERT P HYATT
PO BOX 81230
LAS VEGAS NV 89180

MAIL

MAR 0 2 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of:
Hyatt
Application Serial No.: 08/463,585
Filed: June 5, 1995
For: **IMAGE PROCESSING ARCHITECTURE**

DECISION
ON PETITION

This is a decision on the petition, filed on January 21, 2005 under 37 C.F.R. §1.181 requesting an expedited action on the merits. This petition has been considered a request to affirm that this application is under "special" status in accordance with 37 CFR 1.102.

Petitioner provides support for the request for expedited action with reference to MPEP sections 708 and 708.01. The latter section specifically states that applications pending over 5 years should be considered special. Since this application by virtue of its prolonged pendency is already special in accordance with PTO policy, Petitioner's request is moot.

The examiner will be notified that this application should be considered as "special" and appropriate for expedited action.

The petition is **DISMISSED**.

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600
Communications

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OFFICE OF PETITIONS

NIXON & VANDERHY
1100 NORTH GLEBE ROAD
EIGHTH FLOOR
ARLINGTON , VA 22201

In re Application of
Von Borstel et al.
Application No. 08/463,771
Filed: June 5, 1995
Attorney Docket No. 1331-145

DECISION ON PETITION

This is a decision on the petition pursuant to 37 C.F.R. §1.137(b), filed June 13, 2001, to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned as a result of petitioner's failure to file an appeal brief (and fee required by 37 CFR 1.17(c)) within the time period provided in 37 CFR 1.192(a). As an appeal brief (and appeal brief fee) was not filed within two (2) months of the Notice of Appeal filed July 28, 2000, 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[1]. As no claim was allowed, the above-identified application became abandoned on September 29, 2000[2]. A Notice of Abandonment was mailed on April 11, 2001.

On June 8, 2001, the petitioner filed an amendment. This amendment was not entered, as it failed to place the application in condition for allowance.

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 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

The petitioner has met the requirements to revive the above-identified application, pursuant to 37 CFR 1.137(b). Petitioner submitted the required reply in the form of an Appeal Brief (filed in triplicate) and a Terminal Disclaimer, paid the fees associated with both, paid the petition fee, and made a statement which is being construed as the proper statement of unintentional delay.

The application file is being forwarded to Technology Center 3700 for further processing of the Appeal Brief, filed June 13, 2001.

Telephone inquiries specific to this decision should be directed to Petitions Attorney Paul Shanoski at (703) 305-0011.

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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[1]See 37 CFR 1.192(b), 1.197(c).

[2]See MPEP 1215.04.

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SPECIAL PROGRAMS OFFICE
DAC FOR PATENTS

TOWNSEND AND TOWNSEND AND CREW LLP
TWO EMBARCADERO CENTER
8TH FLOOR
SAN FRANCISCO, CA 94111-3834

In re Application of :
Joe W. Gray et al. :
Application No. 08/463,830 : ON PETITION
Filed: June 5, 1995 :
Attorney Docket No. 02307O-090210US :

This is a decision on the renewed petition under 37 CFR 1.137(b), filed May 30, 2000, to revive the above-identified application.

The petition is **GRANTED**.

The Terminal Disclaimer filed on May 30, 2000 has been accepted, and the period disclaimed is six months.

Telephone inquiries concerning this decision should be directed to Wan Laymon at (703) 305-9282.

The application file is being forwarded to Technology Center 1600 for further processing.

Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Assistant Commissioner
for Patent Policy and Projects

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER OF
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Washington, D.C. 20231

Paper No.30

TOWNSEND AND TOWNSEND AND CREW LLP
TWO EMBARCADERO CENTER
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SAN FRANCISCO, CA 94111-3834

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SPECIAL PROGRAMS OFFICE
DAC FOR PATENTS

In re Application of :
Joe W. Gray et al. :
Application No. 08/463,830 : ON PETITION
Filed: June 5, 1995 :
Attorney Docket No. 02307O-090210US :

This is a decision on the petition under 37 CFR 1.137(b), filed February 16, 2000, 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** final agency action within the meaning of 5 U.S.C. § 704.

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 June 8, 1999, which set a shortened statutory period for reply of three (3) months. Extension of time under the provisions of 37 CFR 1.136(a) were obtained for three (3) months. Accordingly, the above-identified application became abandoned on December 9, 1999.

A grantable petition under 37 CFR 1.137(b)[1] must be accompanied by: (1) the required reply,[2] 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)(III)(C) and (D). The instant petition lack(s) item(s) (4).

Since the above-identified application is a utility or plant application filed before June 8, 1995, 37 CFR 1.137(c) requires a terminal disclaimer dedicating to the public a terminal part of the term of any patent granted on the above-identified application or any patent granted on any continuing application that contains a specific reference under 35 U.S.C. 120, 121, or 365(c) to the above-identified application. The period to be disclaimed will be a terminal part of the patent to be granted equivalent to the period of abandonment. The period of abandonment will be computed to be the number of months from the date of abandonment to the date of filing a grantable petition. A terminal disclaimer fee of $110 is required. If the terminal disclaimer is signed by an assignee, the assignee must comply with the requirements of 37 CFR 3.73(b).

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

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By facsimile: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
Arlington, VA 22202

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[1] As amended effective December 1, 1997. See Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53194-95 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 119-20 (October 21, 1997).

[2] 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.

Telephone inquiries concerning this decision should be directed to Wan Laymon at (703) 305-9282.

Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Assistant Commissioner
for Patent Policy and Projects

Marianne Morgan
Petitions Examiner

UNITED STATES
PATENT AND
TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY
AND DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
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JUN 3 2002

#31

STEPHEN E. REITER
FOLEY & LARDNER
402 WEST BROADWAY
23rd FLOOR
SAN DIEGO CA 92101

In re Application of :
Ronald M. Evans et al :
Serial No.: 08/464,2262 : PETITION DECISION
Filed: June 5, 1995 :
Attorney Docket No.: SALK1100-4 :

This is a decision on the Petition under 37 CFR 1.181, filed February 21, 2002, to Withdraw Holding of Abandonment based on filing of a timely filing of an Appeal Brief.

A review of the file history shows that the examiner mailed a Final Office action to applicants on October 26, 2000, setting a three month shortened statutory period for reply. Applicants replied on April 30, 2001, by filing an amendment and a Notice of Appeal. The examiner mailed an Advisory action to applicants on May 23, 2001. Before the Advisory action was mailed, a second amendment was filed by applicants on May 3, 2001, and a second Advisory action was mailed to applicants on June 25, 2001. Upon failure to receive an Appeal Brief, as required by the Notice of Appeal, the application was held abandoned by Notice of Abandonment, mailed December 17, 2001. Applicants state that a proper Appeal Brief was filed on September 28, 2001 with a three month extension of time and fee therefor. The Brief has not been correlated with the file. It appears that the reason for failure to correlate the Appeal Brief with the file is due to an incorrect Serial Number. It is noted that all papers, including this petition, filed since April 30, 2001 (Notice of Appeal and amendment) have used the incorrect Serial Number "09/464262". This number appears on all transmittal letters and checks. However, the evidence presented shows that applicant timely filed an Appeal Brief and has provided one copy thereof with this petition. In view thereof, the Notice of Abandonment is withdrawn and the application restored to pending status with the mailing of this decision.

Applicant's petition under 37 CFR 1.181 is GRANTED.

Applicants are required to file two additional copies of the Appeal Brief in response to this petition decision as the copies filed September 28, 2001, cannot now be located.

The application will be forwarded to the examiner for further consideration.

Should there be any questions with respect to this decision, please contact William R. Dixon, Jr., by mail addressed to: Director, Technology Center 1600, Washington, D.C. 20231, or by telephone at (703)308-3824 or by facsimile transmission at (703) 308-7922.

Bruce M. Kisliuk
Director, Technology Center 1600

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

VB

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/464,361	06/05/95	LEE J	P0176C3

HM22/0808

JANET E HASAK
GENENTECH INC
460 POINT SAN BRUNO BOULEVARD
SOUTH SAN FRANCISCO CA 94080-4990

EXAMINER	
ALLEN, M	
ART UNIT	**PAPER NUMBER**
1631	25

DATE MAILED: 08/08/00

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

Commissioner of Patents and Trademarks

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

Paper Number 25

In re Application of: James M. Lee, Axel Ullrich and Arjun Singh
Serial No. 08/464,361
Filed: June 5, 1995
For: PREPARATION OF HUMAN IGF VIA RECOMBINANT DNA TECHNOLOGY

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.103, filed May 11, 2000, for Suspension of Action in the above referenced application.

The petition states that the parent application, Serial No. 06/506,078, which has claims which overlap those present in the instant application, is currently involved in an unresolved interference proceeding. It is urged that the outcome of that interference proceeding will have a material bearing on the patentability of the claims in this application. A review of the record in this application indicates that the outcome of Interference No. 102,208 will have a material bearing on the patentability of the claims in this application. Therefore, suspension of action in this application is deemed appropriate.

Action is hereby suspended in this application pending a final determination in the interference proceedings. **Upon termination of the interference proceedings, applicants should notify the examiner to which this application is assigned.** Applicant is not required to request further suspensions at 6 month intervals.

The petition is **GRANTED**.

George C. Elliott, for
John J. Doll, Director
Technology Center 1600

JANET E. HASAK
GENENTECH INC.
460 POINT SAN BRUNO BOULEVARD
SOUTH SAN FRANCISCO, CA 94080-4990

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/464,361	06/05/1995	JAMES M. LEE	P0176C3	9751

7590 12/23/2002

JANET E HASAK
GENENTECH INC
1 DNA WAY
SOUTH SAN FRANCISCO, CA 94080-4990

EXAMINER
ALLEN, MARIANNE P

ART UNIT	PAPER NUMBER
1631	35

DATE MAILED: 12/23/2002

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

UNITED STATES
PATENT AND
TRADEMARK OFFICE

Commissioner for Patents
Washington, DC 20231
www.uspto.gov

Paper No: 35

JANET E HASAK
GENENTECH INC
1 DNA WAY
SOUTH SAN FRANCISCO CA 94080-4990

SN 08/464361

Applicant's submitted a Petition to Correct Inventorship Under 37 CFR §1.324(a) on October 16, 2002.

The petition does not comply with paragraph (b) of 37 CFR §1.324 with respect to inventor Singh.

The petition is DENIED.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Michael P. Woodward
Supervisory Patent Examiner
Technology Center 1600
Art Unit 1631

December 22, 2002

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

MAR 16 2004

Malcolm K. McGowan, Ph.D.
P. O. Box 1404
Alexandria, Virginia 22313-1404

In re Application of :
Jan Leemans et al :
Serial No. : 08/465,219 : DECISION ON PETITION
Filing Date: June 5, 1995 :
Attorney Docket No.: 021565-009

This is in response to applicants' "Petition to Withdraw Holding of Abandonment filed September 16, 2003. The delay is regretted.

On December 10, 2002, an Office action was mailed. On September 9, 2003 , a Notice of Abandonment for failure to timely response the office action was mailed to applicants. On September 16, 2003 the present petition was filed. Applicants assert that a response was timely filed with Three Month extension o time on June 10, 2003. The petition was accompanied with a copy of the response and a copy of postcard receipt.

Applicants' statement and evidence show that a reply was timely filed on June 10, 2003. Accordingly, the petition is granted. The application has been returned to pending status and will be forwarded to examiner for consideration of the amendment/response.

Petition Granted.

Cecilia Tsang for
John Doll
Director, TC1600

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)
6746864	2004-06-08	08465354	1995-06-05	000479.50030

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

	Fee	Code
◉	3 ½ year	(1551)
○	7 ½ year	(1552)
○	11 ½ year	(1553)

Small Entity

	Fee	Code
○	3 ½ year	(2551)
○	7 ½ year	(2552)
○	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

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	/Charles L. Miller/	Date (YYYY-MM-DD)	2008-08-07
Name	Charles L. Miller	Registration Number	43805

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 record s.

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

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

In re Patent No. 6746864
Issue Date: June 8,2004
Application No. 08465354
Filed: June 5,1995
Attorney Docket No. 0479.50030

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed August 22,2008 ,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 22,2008 . 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.

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)
5595023	1997-01-21	08465510	1995-06-05	8401.817

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

	Fee	Code
○	3 ½ year	(1551)
○	7 ½ year	(1552)
◉	11 ½ year	(1553)

Small Entity

	Fee	Code
○	3 ½ year	(2551)
○	7 ½ year	(2552)
○	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

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	/kathrynlhester/	Date (YYYY-MM-DD)	2009-03-18
Name	Kathryn L. Hester, Ph.D.	Registration Number	46768

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

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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 record s.

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

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

In re Patent No. 5595023
Issue Date: January 21,1997
Application No. 08465510
Filed: June 5,1995
Attorney Docket No. 8401.817

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed March 18,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 March 18,2009 . 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

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

OCT 14 2004

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER LLP
1300 I STREET, NW
WASHINGTON DC 20005

In re Application of	:
Richard F. Selden	:
Serial No.: 08/465,596	: PETITION DECISION
Filed: June 5, 1995	:
Attorney Docket No.: 04270.0015	:

This is in response to the petition under 37 CFR 1.181, filed August 13, 2004, for withdrawal of abandonment of the above identified application based on a timely response to the Office Action of December 19, 2003.

A review of the file history shows that the examiner mailed an Office action to applicants on December 19, 2003, setting a three month shortened statutory period for reply. Upon failure to receive a reply the Office mailed a Notice of Abandonment to applicants on June 28, 2004. Applicants state that there was a timely response and have supplied a copy of the submissions including an Amendment filed on June 21, 2004, an Extension of Time request accompanied by a check for $950.00 which was recorded by the PTO on June 28, 2004, and a return Receipt Postcard dated June 28, 2004. The records show that all the submissions were entered in the palm system on June 28, 2004 and were timely filed on June 21, 2004. It is noted that the response of June 28, 2004 and the petition for withdrawal of abandonment were submitted by Michael T, Siekman of Wolf Greenfield & Sacks, P.C. 600 Atlantic Avenue, Boston Mass. 02210-2211. If a change of attorney is being considered, the appropriate papers for that change should be submitted promptly.

The petition is **GRANTED.**

The application will be forwarded to the examiner further action.

Should there be any questions about this decision please contact Jean F. Vollano, by letter addressed to Director, TC 1600, P.O. Box 1450, Alexandria, VA 22313-1450, or by telephone at 571-272-0648 or by facsimile sent to the general Office facsimile number.

Jean F. Vollano for
Bruce Kisliuk
Director, 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
www.uspto.gov

OCT 14 2004

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER LLP
1300 I STREET, NW
WASHINGTON DC 20005

In re Application of	:	
Richard F. Selden	:	
Serial No.: 08/465,596	:	PETITION DECISION
Filed: June 5, 1995	:	
Attorney Docket No.: 04270.0015	:	

This is in response to the petition under 37 CFR 1.181, filed August 13, 2004, for withdrawal of abandonment of the above identified application based on a timely response to the Office Action of December 19, 2003.

A review of the file history shows that the examiner mailed an Office action to applicants on December 19, 2003, setting a three month shortened statutory period for reply. Upon failure to receive a reply the Office mailed a Notice of Abandonment to applicants on June 28, 2004. Applicants state that there was a timely response and have supplied a copy of the submissions including an Amendment filed on June 21, 2004, an Extension of Time request accompanied by a check for $950.00 which was recorded by the PTO on June 28, 2004, and a return Receipt Postcard dated June 28, 2004. The records show that all the submissions were entered in the palm system on June 28, 2004 and were timely filed on June 21, 2004. It is noted that the response of June 28, 2004 and the petition for withdrawal of abandonment were submitted by Michael T, Siekman of Wolf Greenfield & Sacks, P.C. 600 Atlantic Avenue, Boston Mass. 02210-2211. If a change of attorney is being considered, the appropriate papers for that change should be submitted promptly.

The petition is **GRANTED.**

The application will be forwarded to the examiner further action.

Should there be any questions about this decision please contact Jean F. Vollano, by letter addressed to Director, TC 1600, P.O. Box 1450, Alexandria, VA 22313-1450, or by telephone at 571-272-0648 or by facsimile sent to the general Office facsimile number.

Jean F Vollano for
Bruce Kisliuk
Director, Technology Center 1600

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)
5622377	1997-04-22	08465786	1995-06-06	501/1/ADM

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

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	/Richard M. Goldberg/	Date (YYYY-MM-DD)	2006-11-05
Name	Richard M. Goldberg	Registration Number	28215

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 record s.

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

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

In re Patent No. 5622377
Issue Date: April 22,1997
Application No. 08465786
Filed: June 6,1995
Attorney Docket No. U-WP-5130-SH

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed November 5,2006 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 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 November 5,2006 . 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 an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

Telephone inquires related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

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

MAR 11 2008

Michael J. Jaro, Esq.
Chief Patent Counsel
Medtronic Vascular
3576 Unocol Place
Santa Rosa CA 95403

Re: Patent Term Extension
Application for
U.S. Patent No. 5,800,509

ACKNOWLEDGMENT OF WITHDRAWAL OF APPLICATION FOR PATENT TERM EXTENSION

This is in response to the "Withdrawal of Application for Extension of Patent Term," filed February, 11, 2008, of the application for patent term extension for U.S. Patent No. 5,800,509, (S8 Over-the-Wire System).

The withdrawal of the application is hereby acknowledged and the application is dismissed.

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

By mail: Mail Stop Hatch-Waxman PTE
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-0100

Telephone inquiries related to this determination should be directed to the undersigned at (571) 272-7755. E-mail inquiries should be directed to mary.till@uspto.gov.

Mary C. Till
Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

cc: Office of Regulatory Policy
Food and Drug Administration
10903 New Hampshire Ave., Bldg. 51, Rm. 6222
Silver Spring, MD 20993-0002

Attention: Beverly Friedman

RE: S8 Over-the-Wire System
FDA Docket No.: 2004E-0300

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: 28 Jun 2007

DATE : September 7, 2006

TO SPE OF : ART UNIT 1614

SUBJECT : Request for Certificate of Correction for Appl. No.: 08/465866 patent No.: 7,015,315

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

703-308-9390 ext. 116

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: _____

Christopher Low / TC1600 Acting Director

~~SPE~~ ~~Art Unit~~

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)
5683961	1997-11-04	08466174	1995-06-06	

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

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	/Andrea T. Borucki/	Date (YYYY-MM-DD)	2010-02-18
Name	Andrea T. Borucki	Registration Number	33651

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.**

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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

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

In re Patent No. 5683961
Issue Date: November 4,1997
Application No. 08466174
Filed: June 6,1995
Attorney Docket No. MAS2DF.D4

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed February 18,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 February 18,2010 . 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.

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

MORRISON & FOERSTER LLP
12531 HIGH BLUFF DRIVE
SUITE 100
SAN DIEGO, CA 92130-2040

COPY MAILED

JAN 11 2007

OFFICE OF PETITIONS

In re Patent No. 5,663,496 :
Issue Date: September 1, 1997 :
Application No. 08/466,219 : ON PETITION
Filed: June 6, 1995 :
Attorney Docket No. 555642001400 :

This is a decision on the request filed March 14, 2006, which is being treated as a request under 37 CFR 3.81(b)[1] to delete 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 requests removal of The McLaughlin Group as the assignee from the front page of the Letters Patent as "no such assignment has been recorded." Petitioner further states that "[c]opies of the Notices of Recordation and Assignment documents for this matter are not available, as there was no assignment record for the '496 patent."

Petitioner is correct that the Office assignment records do not reflect that any assignment to The McLaughlin Group has been recorded against this file, or any continuing application. However, a review of the assignment records for the divisional application (Application No. 08/101,379; *see* MPEP 306) reflects that an assignment from the inventors to Animatronics, Inc., was recorded on November 22, 1993, and that an assignment from Animatronics, Inc. to McLaughlin Electronics was also recorded on November 22, 1993. Since the assignment document itself for divisional Application No. 08/101,379 is not viewable on the computer database, it is unclear whether the assignment from Animatronics, Inc. was an assignment of all rights, title and interest in the application or whether it was only a partial assignment. Nevertheless, as petitioner correctly points out, no assignment in this application (or for that matter, in any continuing application) was ever recorded to The McLaughlin Group. Therefore, it would be appropriate for issuance of a Certificate of Correction to delete The McLaughlin Group as an assignee.

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[1] *See* MPEP 1309, subsection II; and Official Gazette of June 22, 2004.

The fee for filing a request under 37 CFR 3.81(b) is $130. Accordingly, petitioner's deposit account will be credited an overpayment of $270.

The patent file 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) 272-3218. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

Frances Hicks
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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#25

MORRISON & FOERSTER LLP
12531 HIGH BLUFF DRIVE
SUITE 100
SAN DIEGO, CA 92130-2040

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JAN 25 2007

OFFICE OF PETITIONS

In re Patent No. 5,663,496	:	
Issue Date: September 1, 1997	:	
Application No. 08/466,219	:	ON PETITION
Filed: June 6, 1995	:	
Attorney Docket No. 555642001400	:	

This is a substitute decision on the request filed March 14, 2006, which is being treated as a request under 37 CFR 3.81(b)[1] to delete the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **DISMISSED**.

A decision was rendered on January 11, 2007 granting the request under 37 CFR 3.81(b). The request was accompanied by a $400 fee, whereas, the correct fee is $130. In processing the finance to apply the appropriate fee to this application, the $400 fee was credited back to the deposit account and the $130 fee due could not be charged back to the credit card. While the request has an authorization by Mr. Daniel Yannuzzi to charge the requested fee, Mr. Yannuzzi is not an authorized user of the deposit account and the fee could not be charged. The undersigned has made two telephone calls to the office of Morrison & Foerster LLP to submit an authorization by a user of the account but have not received a reply. Accordingly, this file cannot be forwarded to the Certificates of Correction Branch for issuance of the requested Certificate of Correction until the $130 fee is received for the request under 37 CFR 3.81(b).

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

---

[1] *See* MPEP 1309, subsection II; and Official Gazette of June 22, 2004.

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) 272-3218.

Frances Hicks
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

In re Patent No. 5721241
Issue Date: February 24,1998
Application No. 08466470
Filed: June 6,1995
Attorney Docket No. MKG-001DV

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed April 29,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 April 29,2010 . 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)
5721241	1998-02-24	08466470	1995-06-06	022728-0002

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

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	/William C. Geary III/	Date (YYYY-MM-DD)	2010-04-29
Name	William C. Geary III	Registration Number	31359

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

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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.

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)
5624728	1997-04-29	08466506	1995-06-06	93-183B

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

	Fee	Code
○	3 ½ year	(1551)
○	7 ½ year	(1552)
◉	11 ½ year	(1553)

Small Entity

	Fee	Code
○	3 ½ year	(2551)
○	7 ½ year	(2552)
○	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

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	/Mark D. Elchuk/	Date (YYYY-MM-DD)	2009-12-21
Name	Mark D. Elchuk	Registration Number	33686

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

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

In re Patent No. 5624728
Issue Date: April 29,1997
Application No. 08466506
Filed: June 6,1995
Attorney Docket No. 93-183B

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed December 21,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 December 21,2009 . 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

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

TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO, CA 94111-3834

COPY MAILED

AUG 0 1 2006

OFFICE OF PETITIONS

In re Application of :
Seubert, et al. : DECISION GRANTING PETITION
Application No. 08/466,554 : UNDER 37 CFR 1.181
Filed: June 6, 1995 :
Docket No.: 15270-002120 :

This decision is in response to the petition under 37 CFR 1.181, filed October 31, 2005.

The petition is **GRANTED**.

The above-identified application was held abandoned November 17, 2004 for failure to timely submit a proper reply to the non-final Office action mailed August 16, 2004. The non-final Office action set a three month shortened statutory period of time for reply. Notice of Abandonment dated March 1, 2005.

Petitioners allege that a response to the non-final Office action and a petition for extension of time were timely submitted February 16, 2005. Petitioners have provided copies of the response alleged to have been timely submitted February 16, 2005. The response bears a certificate of mailing in accordance with 37 CFR 1.8.

A review of the application file does not indicate receipt of the response purportedly filed February 16, 2005, however, the response will be considered timely as it complies with the requirements of 37 CFR 1.8(b) in that (1) the Office was promptly informed of the previously timely mailing, (2) a copy of the previously submitted correspondence with a certificate of mailing thereon has been supplied, and, (3) statements attesting to the previous timely mailing have been submitted.

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

This application is being forwarded to Technology Center 1600 for further processing.

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

Alesia M. Brown
Petitions Attorney
Office of Petitions

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)
6,043,240	2000-03-28	08/467,401	1995-06-06	USHR-1161-4Y-37 US DIV

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

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	/Balaram Gupta/	Date (YYYY-MM-DD)	2008-12-10
Name	Balaram Gupta	Registration Number	40009

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.**

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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 record s.

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

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

In re Patent No. 6043240
Issue Date: March 28,2000
Application No. 08467401
Filed: June 6,1995
Attorney Docket No. 2489-0094-00

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed December 10,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 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 December 10,2008 . 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

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov

Paper No. 18

LOUIS MYERS
FISH AND RICHARDSON PC
225 FRANKLIN STREET
BOSTON MASSACHUSETTS 02110-2804

COPY MAILED

MAY 0 6 2002

OFFICE OF PETITIONS

In re Application of :
Pietropaolo et al. :
Application No. 08/467,605 : ON PETITION
Filed: June 6, 1996, 1996 :
Attorney Docket No. Jdp-032CPDV :

This is a decision on the petition resubmitted by facsimile transmission April 17, 2002, with an original executed certificate of mailing under 37 CFR 1.8 having a date of March 27, 1998, which is being treated as a petition under 37 CFR 1.181(no fee) to invoke the remedial provisions of 37 CFR 1.8(b) and withdraw the holding of abandonment.

The petition is **granted**.

This application presumably became abandoned at midnight on January 27, 1998 for failure to reply to the non-final Office action of October 27, 1997. A Notice of Abandonment was mailed May 11, 1998. A petition to revive under 37 CFR 1.137(b) was filed on July 10, 1998 and apparently was misplaced by the USPTO.

Inspection of the petition reveals copies of documents showing that (1) a reply to the non final Office action, along with a declaration under 37 CFR 1.132, (2) a request (and fee) for a two month extension of time, and (3) a return postcard was entrusted to the USPS on March 27, 1998, along with an itemized transmittal complying with the provisions of 37 CFR 1.8. The check for the fee was duly negotiated and the postcard acknowledging receipt was returned to counsel on March 30, 1998.

Clearly the USPTO received the items, and misplaced them after receipt, and further, the reply was timely filed in view of the extension, fee, and executed certificate of mailing.

The holding of abandonment is withdrawn under the remedial provisions of 37 CFR 1.8(b). This application was continuously pending. Since the Notice of Abandonment was mailed in error, it is vacated herewith. The USPTO regrets the errors and delays in treating both the initial reply and the initial petition.

The $55 petition fee paid in 1998 is refundable. Since counsel has apparently changed firms, he should clarify in writing to the Office of Finance--Refunds-- at the USPTO address above as to which account the refund should be credited.

This application is being forwarded to Technology Center AU 1648 for further processing.

Telephone injuries related to this decision may be addressed to the undersigned at (703) 305-1820.

Brian Hearn

Brian Hearn
Senior Petitions Examiner
Office of Petitions
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

Paper No.

MARY E. GOLRICK
CALFEE HALTER & GRISWOLD
1400 MCDONALD INVESTMENT CENTER
800 SUPERIOR AVENUE
CLEVELAND, OH 44114-2688

COPY MAILED

NOV 0 2 2004

OFFICE OF PETITIONS

ON PETITION

In re Patent No. 6,030,626 :
Issue Date: February 29, 2000 :
Application No. 08/467,722 :
Filed: June 6, 1995 :
Patentee(s) Pappachan E. Kolattukudy et al :

This is a decision on the petition under 37 CFR 1.378(c), filed October 8, 2004, to accept the delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

Telephone inquiries concerning this decision should be directed to Wan Laymon at (571) 272-3220.

The patent file is being forwarded to Files Repository.

Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: X

DATE : February 26, 2008

TO SPE OF : ART UNIT 1647

SUBJECT : Request for Certificate of Correction for Appl. No.: 08/468011 Patent No.: 6030804

A response is requested with respect to a request for a certificate of correction.

With respect to the change(s) requested to correct Office and/or Applicant's errors, should the patent read as shown in the certificate of correction attached herewith or the COCIN document(s), in IFW images for the above-identified patented application? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

If the response is for an IFW, within **7** days, please complete and forward the response, to the employee (named below) via scanning into application images, using document code **COCX**.

DO NOT SENT TO ATTORNEY

If the response is for a paper file wrapper, please complete the response and forward the response with the paper file wrapper, to the employee (named below), within **7** days, to:

Certificates of Correction Branch (CofC)
South Tower - 9A22
Palm Location 7580

You can fax the Directors/SPE response to 571-270-9990

LAMONTE NEWSOME
Certificates of Correction Branch
703-308-9390 ext. 112

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: _____

_____

[signature] 1647

SPE **Art Unit**

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)
6046241	2000-04-04	08/468,043	1995-06-06	1810-41

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

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	/Eric S. Furman/	Date (YYYY-MM-DD)	2008-05-13
Name	Eric S. Furman	Registration Number	45664

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.**

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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 record s.

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

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

In re Patent No. 6046241
Issue Date: April 4,2000
Application No. 08468043
Filed: June 6,1995
Attorney Docket No. 1810-41

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed May 13,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 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 May 13,2008 . 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 an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

Telephone inquires related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

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)
5,998,417	1999-12-07	08/468,065	1995-06-06	USHR-1161-4Y-45 US DIV

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

	Fee	Code
◯	3 ½ year	(1551)
◉	7 ½ year	(1552)
◯	11 ½ year	(1553)

Small Entity

	Fee	Code
◯	3 ½ year	(2551)
◯	7 ½ year	(2552)
◯	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

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	/Balaram Gupta/	Date (YYYY-MM-DD)	2008-11-11
Name	Balaram Gupta	Registration Number	40009

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 record s.

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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.

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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

In re Patent No. 5998417
Issue Date: December 7,1999
Application No. 08468065
Filed: June 6,1995
Attorney Docket No. 2489-0102-00

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed November 11,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 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 November 11,2008 . 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

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MILLEN WHITE ZELANO & BRANIGAN, P.C.
2200 CLARENDON BLVD., SUITE 1400
ARLINGTON, VA 22201

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JUL 18 2005

OFFICE OF PETITIONS

In re Application of :
Bernard Belleau et al :
Application No. 08/468,362 : ON PETITION
Filed: June 6, 1995 :
Attorney Docket No. IAF-1/2-CIP1 :

This is a decision on the petition under 37 CFR 1.313 (c)(2), filed July 15, 2005, 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 4, 2005 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 Wan Laymon at (571) 272-3220.

This matter is being referred to Technology Center AU 1624 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Amendment.

Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

[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
P.O. Box 1450
Alexandria, VA 22313-1450
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KLAUBER AND JACKSON
411 HACKENSACK AVENUE
HACKENSACK NJ 07601

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MAY 09 2007

OFFICE OF PETITIONS

In re Application of
Robert Sklar, et al.
Application No. 08/468,731
Filed: June 6, 1995
Attorney Docket No. 04585/028004

ON PETITION

This is a decision in response to the petition, filed January 8, 2007, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

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 a failure to reply in a timely manner to a non-final Office action mailed April 20, 2004. A Notice of Abandonment was mailed on November 1, 2006. In response, on January 8, 2007, the present petition was filed.

A grantable petition under 37 CFR 1.137(b)[1] must be accompanied by: (1) the required reply,[2] 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)(III)(C) and (D). The present petition lacks item (4).

[1] As amended effective December 1, 1997. See Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53194-95 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 119-20 (October 21, 1997).

[2] 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.

37 CFR 1.137(d)(1) states:

> "...Any petition to revive pursuant to this section in either a utility or plant application filed before June 8, 1995, must be accompanied by a terminal disclaimer and fee as set forth in §1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the lesser of:
>
> (i) The period of abandonment of the application; or
>
> (ii) The period extending beyond twenty years from the date on which the application for patent was filed in the United States or, if the application contains a specific reference to an earlier filed application (s) under 35 U.S. C. 120, 121, or 365(c), from the date on which the earliest such application was filed. The period of abandonment will be computed to be the number of months from the date of abandonment to the date of filing a grantable petition. A terminal disclaimer fee of $130 ($65 if small entity) is required. If the terminal disclaimer is signed by an assignee, the assignee must comply with the requirements of 37 CFR 3.73(b)."

As this application was filed on June 6, 1995, a terminal disclaimer is required.

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

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

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

The centralized facsimile number is **(571) 273-8300**.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3204.

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
www.uspto.gov

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411 HACKENSACK AVENUE
HACKENSACK, NJ 07601

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SEP 26 2007

OFFICE OF PETITIONS

In re Application of
Robert Sklar, et al.
Application No. 08/468,731
Filed: June 6, 1995
Attorney Docket No. 04585/028004

ON PETITION

This is a decision in response to the renewed petition, filed June 28, 2007, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition is **GRANTED**.

The application became abandoned for a failure to reply in a timely manner to a non-final Office action mailed December 15, 2004. A Notice of Abandonment was mailed on November 1, 2006. On January 8, 2007, a petition to revive was filed; however, the petition was dismissed in a decision mailed May 9, 2007. In response, on June 28, 2007, the present petition was filed.

The petition satisfies the conditions for revival pursuant to the provisions 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 $750; (3) an adequate statement of unintentional delay; and (4) a terminal disclaimer and fee as required by 37 CFR 1.137(d).

The terminal disclaimer is accepted and has been made of record. Any continuing application filed from this application must contain a copy of the terminal disclaimer. The copy of the terminal disclaimer must be filed with a cover letter requesting the terminal disclaimer be recorded on the continuing application. A copy of this decision should be attached to the cover letter.

The application is being referred to Technology Center AU 1646 for consideration of the amendment filed January 8, 2007.

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

DO NOT SEND TO WAREHOUSE

NOTICE RE: CERTIFICATES OF CORRECTION

DATE : 7-19-02 Paper No.: 21

TO : Supervisor, Art Unit 1600 1612

SUBJECT : Certificate of Correction Request in Patent No.: 5712291

A response to the following question is requested with respect to the accompanying request for a certificate of correction.

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.

Valerie Jackson

PLEASE COMPLETE THIS FORM AND RETURN WITH FILE, WITHIN 7 DAYS, TO CERTIFICATES OF CORRECTION BRANCH - PK 3-915/922 PALM LOCATION 7580 - TEL. NO. 305-8309

THANK YOU FOR YOUR ASSISTANCE!

Note your decision by placing a check mark in the appropriate box below, indicating whether all changes requested in the Request for Certificate of Correction should be applied. Please specify which changes should not be applied and indicate the reason(s) for denial, in the "Comments" section below.

☐ YES ☐ NO

☐ Comments: _____

ALAN L. ROTMAN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

Supervisor

1625

Art Unit

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No. 23

DATE : 5-25-04

TO SPE OF : ART UNIT 1600

SUBJECT : Request for Certificate of Correction on Patent No.: 5712291

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 3-915
Palm location **7580** - Tel. No. 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. Please note: Second page of the C of C was not printed. Should this be granted.

Valerie Jackson
Certificates of Correction Branch

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** for Page 1 — All changes apply.
- [ ] **Approved in Part** — Specify below which changes **do not** apply.
- [ ] **Denied** — State the reasons for denial below.

Comments:
As submitted the page which was not printed in the Certif. of Corrections is PAGE 1 (ONE) of the request. See Exhibit B (Right Inside of File jacket)

SPE

1623
Art Unit

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)
5670173	1997-09-23	08469782	1995-06-06	FC 14647-94

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

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	/france cote/	Date (YYYY-MM-DD)	2006-11-28
Name	France Côté	Registration Number	37037

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.**

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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

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

In re Patent No. 5670173
Issue Date: September 23,1997
Application No. 08469782
Filed: June 6,1995
Attorney Docket No. P-57399A

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed November 28,2006 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 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 November 28,2006. 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 an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

Telephone inquires related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

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)
5,562,408	1996-10-08	08/470,095	1995-06-06	13DV12216

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

	Fee	Code
○	3 ½ year	(1551)
○	7 ½ year	(1552)
◉	11 ½ year	(1553)

Small Entity

	Fee	Code
○	3 ½ year	(2551)
○	7 ½ year	(2552)
○	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

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	/mm52020/	Date (YYYY-MM-DD)	2008-11-05
Name	Mardson McQuay	Registration Number	52020

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 record s.

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

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

In re Patent No. 5562408
Issue Date: October 8,1996
Application No. 08470095
Filed: June 6,1995
Attorney Docket No. 13DV-12216

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed November 5,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 November 5,2008 . 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

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
www.uspto.gov

#11

Antonelli Terry Stout & Kraus
Suite 1800
1300 North 17th Street
Arlington, VA 22209

MAILED

JAN 15 2002

Office of the Director
Group 3600

In re Application of :
Osamu Yokomizo, et al. :
Application No. 08/470,424 :
Filed: June 6, 1995 :
For: FUEL ASSEMBLY AND NUCLEAR REACTOR :

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is in response to applicant's petition to withdraw the holding of abandonment, filed in the United States Patent and Trademark Office (USPTO) on October 26, 2001.

The petition is **GRANTED**.

A review of the file record indicates that the application was held abandoned for failure to timely respond to the Office action dated February 26, 2001.

The applicant asserts that a timely response was filed and has submitted documents to support this assertion.

However, the original amendment, extension of time request and Notice of Appeal submitted by applicant on July 26, 2001 have recently been found, and have been matched with the file. The holding of abandonment is therefore withdrawn and the application is restored to pending status.

The application is being forwarded to the Supervisory Legal Instruments Examiner for entry of the Amendment, extension of time request, and Notice of Appeal of July 26, 2001, as well as entry of the Appeal Brief of October 26, 2001. The application will then be forwarded to the Primary Examiner for prompt action on the merits of the claims.

Telephone inquiries relative to this decision should be directed to Special Programs Examiner Steven Meyers at (703) 308-3868.

for Gerald Goldberg, Director
Patent Technology Center 3600
(703) 308-1134
Facsimile No.: (703) 308-2177

SM/dc: 12/27/01

SM

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 13 2005

ANTONELLI, TERRY, STOUT & KRAUS, LLP
1300 NORTH SEVENTEENTH STREET
SUITE 1800
ARLINGTON VA 22209-9889

IN RE: O. YOKOMIZO, et al.
SERIAL NO. 08/470,424 :PETITION UNDER 37 CFR 1.181
FILED: June 6, 1995 :
DOCKET # 501.25507CX5

FOR: FUEL ASSEMBLY AND NUCLEAR REACTOR

This is in response to the petition filed on February 23, 2004 for entry of an amended Appeal Brief in response to a Notice of Non-Compliance.

The petition is GRANTED to the extent discussed below.

FACTS

Applicant filed a Brief under 37 CFR 1.192 on October 26, 2001 along with an amendment to a claim. On January 23, 2002, an advisory action was mailed entering the amendment.

On June 20, 2003 a notice of defective brief was mailed indicating that the brief filed on October 26, 2001 1.) improperly refers to reference numbers in the specification, 2.) incorporates new matter in the summary of the invention, 3.) includes an improper statement of issues, 4.) does not provide arguments as to why the claims do not stand or fall, and 5.) does not provide arguments under separate headings.

An amendment to correct the dependency of a claim was filed on July 21, 2003. That amendment was entered in an advisory action mailed on August 7, 2003

A new Brief was received on July 21, 2003

A letter was mailed on December 18, 2003 indicating that the amended brief was still defective for three reasons: 1.) The inclusion of material in the Summary of the Invention that was not found in the original specification; 2.) failure to provide separate arguments for each claims indicated as standing or falling separately from other claims; and 3.) improper headings of some of the issues.

On January 22, 2004, a letter was mailed to the applicant indicating that because of the inordinate amount of time that passed between the filing of the amended Brief and the letter of non-compliance mailed on December 18, 2003, the response would not be considered advertent and a new 1 month time period would be restarted to provide and amended Brief in response to the latest notice of non-compliance.

On February 23, 2004 an amended Brief was filed.

On March 22, 2005 a Communication re: Appeal was mailed to the applicant indicating that the Appeal was dismissed for failure to provided a corrected Brief. Since there were no allowable claims, the application was held abandoned.

DISCUSSION

Applicant petitions that extraneous information in the Summary of the Invention should not be placed under a separate heading, as suggested by the examiner.

With respect to the subject matter added to the Summary of the Invention that is not found or supported by the specification, applicant argues that this information will assist the Board in understanding the skill in the art. Although providing such information is not prohibited and may be useful to the members of the Board, such information should not be included in the Summary of the Invention. In this case, the examiner has alleged that the specification does not provide support for the invention claimed and providing information in the summary of the invention that is not supported by the original disclosure only serves to confuse matters. It is the applicant's understanding that this subject matter is "inherent" in the summary of the invention, contrary to the examiner's opinion that it is not. Since this issue centers on a rejection of the claim, it is appealable and therefore not properly before the Director of a Technology Center. Therefore, the petition is granted on this issue to the extent that it will be brought before the Board and an appealed matter to be decided by the Board.

With respect to the issue of providing separate arguments for each claim standing or falling separate from other claims, the rules and MPEP are clear as to this requirement. 37 CFR 1.192(c)(7) specifically states:

> *"For each ground of rejection which appellant contests and which applies to a group of two or more claims, the Board shall select a single claim from the group and shall decide the appeal as to the ground of rejection on the basis of that claim alone unless a statement is included that the claims of the group do not stand or fall together and, in the argument under paragraph (c)(8) of this section, appellant explains why the claims of the group are believed to be separately patentable. Merely pointing out*

differences in what the claims cover is not an argument as to why the claims are separately patentable."(emphasis added).

The MPEP further discusses this requirement and states in section 1206 under Appeal Brief Content :

"*It should be noted that 37 CFR 1.192(c)(7) requires the appellant to perform two affirmative acts in his or her brief in order to have the separate patentability of a plurality of claims subject to the same rejection considered. The appellant must (A) state that the claims do not stand or fall together* ***and*** *(B) present arguments why the claims subject to the same rejection are separately patentable. Where the appellant does neither, the claims will be treated as standing or falling together. Where, however, the appellant (A) omits the statement required by 37 CFR 1.192(c)(7) yet presents arguments in the argument section of the brief, or (B) includes the statement required by 37 CFR 1.192(c)(7) to the effect that one or more claims do not stand or fall together (i.e., that they are separately patentable) yet does not offer argument in support thereof in the "Argument" section of the brief, the appellant should be notified of the noncompliance as per 37 CFR 1.192(d). Ex parte Schier, 21 USPQ2d 1016 (Bd. Pat. App. & Int. 1991); Ex parte Ohsumi, 21 USPQ2d 1020 (Bd. Pat. App. & Int. 1991)."(emphasis added).*
Thus, it has been determined that the examiner has followed the correct procedures in handling this matter. The applicant argues in his petition that 37 CFR 1.192(c)(7) specifically provides a solution to such non-compliance in that in the event that such section has not been complied with, "the Board shall select a single claim from the group and shall decide the appeal as to the ground of rejection on the basis of that claim alone". In this case, the applicant has been notified of the deficiencies and the appellant has responded by electing not to argue the claims identified by the examiner independently. Therefore, the issue is considered closed and the examiners answer will only be directed to the claims that were sufficiently argued by appellant.

With respect to the issue of improper headings of the issues, a review of the Brief does indicate that the statement of the issues is correct and under the separate head of each issue. Although confusing as written, the Brief does at least refer back to a specific statement of the specific issue. For this reason, the Board should be able easily determine the specific issue being argued.

With respect to applicant's concerns over the lack of timeliness of the processing of this application, a review of the processing history of this application was made and it has been determined that the delay in acting on the application after the abandonment was rescinded was not a result of the examiner's actions, but rather a processing error that failed to notify the examiner of the rescinded abandonment of this file. Applicant is encouraged in the future to alert the Office when it appears that processing of an application is unusually long. This may be done by telephoning the examiner, his supervisory patent examiner or filing a status request.

The petition is **GRANTED**.

Inasmuch as the Brief filed February 23, 2004 is deemed sufficient, the Office communication mailed March 22, 2005 is hereby vacated. The holding of abandonment indicated in the letter dated March 22, 2005 is therefore withdrawn.

The application is being forwarded to the examiner for preparation of an examiners answer in accordance with this decision.

Any question concerning this decision should be referred to SPE Michael Carone at 703 306-4198.

Donald Hajec
Director, TC 3600
(703) 306-4180
/mjc:

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)
5631245	1997-05-20	08470501	1995-06-06	1069

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

	Fee	Code
○	3 ½ year	(1551)
○	7 ½ year	(1552)
○	11 ½ year	(1553)

Small Entity

	Fee	Code
○	3 ½ year	(2551)
○	7 ½ year	(2552)
◉	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

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	/Charles Fallow/	Date (YYYY-MM-DD)	2009-09-03
Name	Charles W. Fallow	Registration Number	28946

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 record s.

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

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

In re Patent No. 5631245
Issue Date: May 20,1997
Application No. 08470501
Filed: June 6,1995
Attorney Docket No. CWF-1069

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed September 3,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 September 3,2009 . 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 DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY OF COMMERCE AND
COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, DC 20231

#7

January 19, 2000

Stephen G. Ryan
Sprung Kramer Schaefer & Briscoe
660 White Plains RD
Tarrytown, NY 10591-5144

In re application of:
Reiner Fischer et al.
Application No. 08/470,563
For: N-ARYL-SUBSTITUTED NITROGEN-CONTAINING et al.

DECISION GRANTING
PETITION

This is a decision on the petition filed September 13, 1999, requesting that the above-identified application be withdrawn from the holding of abandonment and restored to pending status.

The petition is granted.

Petitioners allege that they never received the Notice to File Missing Parts mailed on July 7, 1995.

The evidence submitted is sufficient to establish that the Notice to File Missing Parts of Application was not received by the petitioners.

In view of the above, the holding of abandonment is hereby withdrawn and the application restored to pending status.

A new Notice to File Missing Parts of Application is attached to the petition, setting a new response period two months from the notice date.

Doshie E. Day
Program Management Assistant
Office of Initial Patent Examination
(703) 308-3640

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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**OFFICE OF PETITIONS
A/C PATENTS**

HUNTON & WILLIAMS
1900 K STREET, N.W., 12TH FLOOR
WASHINGTON, DC 20006

In re Application of :
John C. Harvey et al. :
Application No. 08/470,571 : NOTICE
Filed: June 6, 1995 :
Attorney Docket No. 05634.0261 :

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.

Inquiries related to this communication should be directed to the Office of Petitions Staff at(703) 305-9285

This file is being forwarded to Technology Center 2700.

Irvin Dingle
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

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DEC 28 2004

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600

In re Application of
John C. Harvey, et al.
Application No. 08/470,571
Filed: June 6, 1995
For: **SIGNAL PROCESSING APPARATUS AND METHODS**

DECISION ON PETITION

This is a decision on the Petition filed March 7, 2000, pursuant to 37 C.F.R. § 1.181. No fee is required.

The U.S. Patent and Trademark Office is currently undergoing a conversion process, converting paper applications into an electronic format. During the conversion process for the subject application, the subject petition was identified. without a corresponding decision.

Within the petition of March 7, 2000, Petitioner makes a requests regarding two issues. The first request is to impose a time schedule on the examiners and Group Director, responsible for each of Applicants' applications. The second request is the removal of an Administrative Requirement imposed on Applicants in each of Applicants' applications.

A review of the application record reveals that on March 7, 2002, Applicants filed a request to withdraw the petition in its entirety.

Accordingly, the petition filed March 7, 2000 is **Dismissed as Moot** as having been withdrawn from consideration on March 7, 2002.

Dwayne D. Bost
Special Program Examiner
Technology Center 2600
Communications

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Group 2700
2600

In re Application of
HARVEY, JOHN C., et al.
Application No. 08/470,571
Filed: June 6, 1995
For: **SIGNAL PROCESSING APPARATUS AND METHODS**

DECISION
ON
PETITION

This is a decision in response to the Petition to the Director under 37 CFR § 1.181 filed August 4, 2005. The petition is treated under 37 CFR § 1.181(a)(1), invoking supervisory authority of the Director.

The Petition is **GRANTED-IN-PART**.

Petitioner states that Appellant's brief was filed on February 8, 2005 and that to date, an Examiner's Answer has not been received. Petitioner requests that the Director of Patents and Trademarks ('Director') exercise his supervisory authority and issue a written Examiner's Answer in the subject application within thirty (30) days.

Petitioner's request will be treated as a request for expedited handling in accordance with MPEP §708.01.

A review of the recent file activity reveals that a final Office action was mailed on April 28, 2004, rejecting all pending claims.

On September 20, 2004, appellants filed a Notice of Appeal and a response to the outstanding final Office action.

On November 24, 2004, an Advisory Action was mailed on November 24 and supplemented on December 20, 2004.

Appellants filed a 730 page brief on February 8, 2005.

MPEP §708.01 [R-2] List of Special Cases, states in part:...

> Certain procedures by the examiners take precedence over actions even on special cases. For example, all papers typed and ready for signature should be completed and mailed.
>
> All issue cases returned with a "Printer Waiting" slip must be processed and returned within the period indicated.
>
> Reissue applications, particularly those involved in stayed litigation, should be given priority.

> Applications in which practice requires that the examiner act within a set period, such a 2 months after appellants brief to furnish the examiner's answers (MPEP § 1208), necessarily take priority over special cases without specific time limits. [emphasis added]

MPEP §1208 Examiner's Answer, states in part:

APPEAL CONFERENCE...

> An appeal conference is mandatory in all cases in which an acceptable brief (MPEP § 1206) has been filed. However, if the examiner charged with the responsibility of preparing the examiner's answer reaches a conclusion that the appeal should not go forward and the supervisory patent examiner (SPE) approves, then no appeal conference is necessary...
> The examiner should furnish the appellant with a written statement in answer to the appellant's brief within 2 months after the receipt of the brief by the examiner. [emphasis added]

In accordance with MPEP §§ 708.01 and 1208, the subject application should have been given precedence and action taken within two months of receipt of appellant's brief. Petitioner is correct in that a response to the brief has not yet been mailed.

Therefore, the examiner is directed to take up for action the subject application, in the appropriate order for "special" applications, as set forth and in accordance with MPEP §708.01.

The request for expedited action is **Granted**.

In accordance with MPEP §1208, an appeal conference is mandatory in all cases. The outcome of that conference may result in other action such as reopening of prosecution or even the allowance of the application. In addition, appellants' 730 page brief could require additional time from the examiner and/or conferees to address each of the arguments raised in appellants' brief, as compared to other typical appeal briefs, in order to insure that all issues have been properly addressed.

Therefore, regarding petitioner's request that the Office provide a written Examiner's Answer in response to Appellants 730 page brief, and to do so within thirty (30) days, is **Denied**. The examiner will be required to pick up the subject application for expedited processing, but will not be limited in the amount of time required to address all issues before a conference panel, or in presentation of the Office's position in an Examiner's answer, should the conference panel agree on that course of action.

In regard to petitioner's 489 page "Memorandum In Support Of Applicants' Petition To The Director Under 37 C.F.R. §1.181", this addendum to applicants' petition is dismissed as moot. As stated above, petitioner's request that the application be handled in an expeditious manner due to the submission of appellants' brief, has been granted in accordance with MPEP §708.01 and thus the various issues raised in the addendum does not provide any further relevance.

The application file will be forwarded to the examiner for action in appropriate due course as set forth above.

Andrew Faile, Director
Technology Center 2600
Communications

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MAY 2 2006

JOHN P. WHITE
COOPER & DUNHAM LLP
1185 AVENUE OF THE AMERICAS
NEW YORK, NY 10036

In re Application of	:
Ron S. Israeli et al	:
Serial No.: 08/470,735	: DECISION ON PETITION
Filed: 06 June 1995	:
Attorney Docket No.: 1769/41426-D	:

This letter is in response to the petition under 37 C.F.R. 1.313(a) filed 16 June 2004 requesting withdrawal of the above-identified application from issue. The delay in acting on this petition is regretted.

BACKGROUND

On 20 April 2004 the examiner mailed to applicants a Notice of Allowability and a Notice of Allowance and Issue Fee Due setting a three month statutory period for payment of the Issue Fee and to submit new formal drawings. Claims 128-144 and 161 were indicated as allowable by the examiner in the Notice of Allowability (note – claim 139 was canceled by Examiner's amendment). The issue fee was indicated as due on 20 July 2004.

On 16 June 2004 applicants filed an amendment under 37 CFR 1.312 requesting entry of an amendment after the Notice of Allowance in which it was proposed to amend claims 128-138 and 141 and cancel claims 139-140.

On 16 June 2004, applicants also filed a Supplemental Information Disclosure Statement citing four new references, but not discussing them. The only comment was that they had been cited in a related Japanese application on 2 March 2004.

On 16 June 2004 applicants filed a petition under 37 CFR 1.313(a) requesting that the instant application be withdrawn from issue.

On 22 July 2004 applicants filed comments on the Examiner's reasons for allowance.

The Issue was recorded as received on 23 July 2004 (Certificate of Mailing dated 20 July 2004) and is considered timely received.

DISCUSSION

The above file history has been carefully considered.

Petitioners explain that they received an untranslated copy of a Japanese patent examiner's office action mailed to them by their Japanese associates on 05 March 2004. In this same communication the Japanese associates stated that an English translation of the Office action would be sent shortly thereafter. This communication was addressed to Mark A. Farley, an attorney with Cooper & Dunham at the time. On 17 March 2004 Mr. Farley forwarded a copy of this letter from the Japanese associates to the client and the legal representatives of a licensee and a sublicensee. On 29 March 2004, Cooper & Dunham received a copy of an English translation of the Japanese official action mailed 02 March 2004, identifying the four references used in the art rejections.

On March 30, 2004 Mr. Farley's affiliation with Cooper & Dunham ended. Another attorney, Cindy Yang, prepared a letter dated 06 April 2004, to be sent by Cooper & Dunham to the client, the legal representatives of the licensee, and the sublicensee that included a copy of the English translation of the Japanese Office action and copies of the four prior art references.

On 04 June 2004, Edward Gates, an attorney representing a sublicense notified Cooper & Dunham that the four references cited by the Japanese Patent Office should be considered in terms of making them of record in this application.

Following a telephone conference call which Ms. Yang had with Special Programs Examiner William Dixon, Jr. and Jasemine Chambers, Director of Technology Center 1600, petitioners filed the instant Petition to Withdraw the application from Issue under 37 CFR 1.313(a) and concurrently an Amendment After Notice of Allowance under 37 CFR 1.312.

The established procedure provided by the PTO for submitting additional references for consideration by an examiner after allowance of an application is to file an Information Disclosure Statement under CFR 1.97 (d) (1) - (3) . A proper submission under 37 CFR 1.97(d) (1) - (3) requires that applicants submit (1) a petition requesting consideration and fee therefore; (2) a fee in accordance with §1.17(p); and (3) a certification (37 CFR 1.97(e)):

> 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 foreign application not more than three months prior to the filing of the information disclosure statement; or
>
> That no item of information contained in the information disclosure statement was cited in a communication from foreign application, and to the knowledge of the person signing the certification after making reasonable inquiry, no item of information contained in the information disclosure statement was known to any individual designated in §1.56(c) more that three months prior to the filing of the information disclosure statement.

However, any submission under 37 CFR 1.97(d) or (e) was excluded because applicants could not provide either of the above required certifications.

Therefore, applicant is requesting that, instead, the instant application be withdrawn from issue under 1.313(a) so that the IDS might be considered by the examiner.

37 CFR 1.313(a) states, in part:

> Applications may be withdrawn from issue for further action at the initiative of the Office or 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 37 CFR 1.17(h) and a showing of good and sufficient reasons why withdrawal of the application is required.

As such, a grantable petition requesting withdrawal of an application from issue must be accompanied by: (1) a showing of good an sufficient reasons why withdrawal of the application from issue is necessary; and (2) the requisite petition fee under 37 CFR 1.17(h). **The petition of $130 has been charged to petitioners' Deposit Account No. 03-3125 .**

The petition fails to set forth any good or sufficient reason as to why withdrawal of the application is necessary. The mere submission of an IDS with the petition does not make withdrawal of the application from issue necessary. There are other avenues open to applicants to have an IDS considered other than by way of petition. Applicants may request reexamination of an issued patent under 37 CFR 1.510. However, applicants are precluded from filing a Request for Continued Examination under 37 CFR 1.114 in order to have the IDS considered in view of the filing date of the application. A continuing application under 35 U.S.C. 111, however, could be filed.

The IDS submitted 20 July 2004 lacks the required certification under CFR 1.97(e) or the good and sufficient reasons required by 1.313(a). Therefore, the only other basis for requesting withdrawal from issue would be under 37 CFR 1.183.

In order for grant of any petition under 37 CFR 1.183, petitioner must show (1) that this is an extraordinary situation where (2) justice requires waiver of the rule. In re Sivertz, 227 USPQ 255, 256 (Comm'r Pat. 1985). In other words, the only possible remedy for applicants would be waiver of a Rule for conducting business before the Office is necessary in order to preserve applicants' property rights. Petitioner has not shown that such condition exists in this case. Petitioner has not demonstrated that the lack of a certification was caused by "extraordinary circumstances" such that "justice requires" waiver of the requirement for certification set forth in 37 CFR 1.313(a).

Moreover, petitioners have a suitable remedy on hand that does not require the extraordinary remedy of invoking 37 CFR 1.183, i.e., filing of a continuation application under 35 U.S.C. 111 or a request for a re-examination subsequent to issuance of the patent. It is brought to petitioners' attention that the Office will not normally consider an extraordinary remedy, when

the rules already provide an avenue for obtaining the relief sought. See Cantello v. Rasmussen, 220 USPQ 664, 665 (Comm'r Pat, 1982). As set forth in MPEP §609, applicants wishing to have the Office consider an IDS, where, as apparently herein, the necessary certification cannot be made, should consider filing of a continuing application, wherein the applicants may bring the references to the attention of the examiner without having to also tender a certification. While the petitioner may be concerned about the loss of term should a continuing application be necessary to have the proffered references considered, the underlying delay necessitating such an action is that of the petitioner, not the Office. Moreover, the statutes and regulations do not compel an applicant to claim benefit under 35 U.S.C. 120 of any earlier case that might shorten the term of a forthcoming patent under 35 U.S.C. 154. However, should petitioner desire to be entitled to the potential benefits of earlier application(s) via 35 U.S.C. 120, then petitioner must also accept the consequences attendant to that action. See Abbott Laboratories v. Novopharm Ltd., 38 USPQ2d 1309, 1312 (D.C.N. II, 1996), aff'd 104 F.3d. 1305, 41 USPQ2d 1535 (Fed. Cir. 1997).

DECISION

For all of the above reasons, the petition under 37 CFR 1.313(a) requesting withdrawal of the application from issue is **DENIED**.

The four references submitted in the Information Disclosure Statement will be placed in the file but will not be considered as provided for in 37 CFR. 1.97(i). The amendment under 37 CFR 1.312 will be considered by the examiner.

Any request for reconsideration of this decision must be filed within two (2) months of the mailing date of this decision in order to be considered timely.

Should there by any questions regarding this decision, please contact Special Program Examiner, William R. Dixon, Jr. by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0519 or by facsimile sent to the general Office facsimile number, 571-273-8300.

George C. Elliott

George C. Elliott
Director, Technology Center 1600

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OFFICE OF PETITIONS

COOPER & DUNHAM LLP
1185 AVENUE OF THE AMERICAS
NEW YORK NY 10036

In re Application of :
Israeli et al. :
Application No. 08/470,735 : DECISION ON PETITION
Filed: June 6, 1995 :
Attorney Docket No. 41426-D/JPW/BJA :

This is a decision on the petition filed July 5, 2006, requesting (1) reconsideration of the dismissal mailed May 3, 2006, of the previous petition under 37 CFR 1.313(a) filed July 30, 2004, to withdraw the above-identified application from issue, which is properly treated as a petition under 37 CFR 1.313(c), or in the alternative, (2) under 37 CFR 1.183, waiver of the rules with the same result.

The petition considered under 37 CFR 1.313(a), or 1.313(c), is **DISMISSED**.

The petition considered under 37 CFR 1.183 is **DISMISSED**.

The Technology Center Group Director dismissed the requested withdrawal in the decision of May 2, 2006. The decision correctly noted that petitioner's lack of supplying the statement required by 37 CFR 1.97(e)(1) or (e)(2) such the examiner lacked any authority to consider the IDS was not good and sufficient reasons for withdrawal and that petitioner had not supplied any other adequate basis for withdrawal.

Petitioner again asserts that withdrawal of this application from issue is warranted such that the IDS filed July 23, 2004, and thereafter may be considered by the examiner. In the alternative, waiver of the rules is requested. Both petitions are properly before the Office of Petitions.[1]

As to the petition considered under 37 CFR 1.313(a):

Inspection of USPTO records reveals that applicant paid the issue fee on July 23, 2004. Accordingly, 37 CFR 1.313(a) no longer applies to this application, as that part of the regulation only speaks to petitions for withdrawal filed *prior* to payment of the issue fee. See MPEP 1308. The petition filed July 23, 2004 as it was filed prior to payment of the issue fee, was properly considered by the Group Director under the terms of 37 CFR 1.313(a). As such, the petition filed July 5, 2006, considered under 37 CFR 1.313(a), must be dismissed as immaterial. Note further that MPEP § 1308 gives as an example a reason that does not warrant withdrawing an application from issue after payment of the issue fee at the initiative of the Office: to permit the examiner to consider an information disclosure statement. Once the issue fee is paid, an applicant's request for withdrawal is permitted only for the reasons stated in 37 CFR 1.313(c), and petitioner has failed to meet any of the requirements of 37 CFR 1.313(c) for withdrawal after payment of the issue fee. See MPEP 1308.

With respect to the petition considered under 37 CFR 1.183:

The regulations pertaining to the submission of an information disclosure statement (IDS) do not

[1] As explained in MPEP 1002.02(b), ¶¶ 2, 33, only the Office of Petitions has the delegated authority to decide a petition under 37 CFR 1.313(c) or § 1.183.

require that an IDS be filed, but rather, set forth the circumstances and conditions under which the Office will consider information promptly brought to its attention by applicant(s). Further, these circumstances and conditions are linked to the stage of prosecution at the time of submission of the IDS, as it is necessary for the Patent and Trademark Office (Office) to balance its need and desire to consider all information relevant to an application with its need for an efficient operation and its capability to consider information at various stages in the prosecution of an application. The *quid pro quo* for USPTO consideration of an IDS after close of prosecution is, however, that applicant diligently present the information to the USPTO, a circumstance that did not happen here.

Here, it is due to the delay of applicants and their former registered practitioner, that the requisite statement under 37 CFR 1.97(e) cannot be made. It is thus clear that petitioner is attempting in the guise of a petition filed under 37 CFR 1.313(a), or wavier of the requirements of 37 CFR 1.131(a), to circumvent the requirements of 37 CFR 1.97(d).

In order for grant of any petition under 37 CFR 1.183, petitioner must show (1) that this is an extraordinary situation where (2) justice requires waiver of the rule. In re Sivertz, 227 U.S.P.Q. 255, 256 (Comm'r Pat. 1985). Petitioner has not shown that either condition exists in this case.

Petitioner asserts that the information in question, while such was first made known to petitioner upon the March 5, 2004 Office action from the Japanese Patent Office, went through several levesl of consideration and review by domestic and foreign counsel and a licensee *vis a vis* its relevance to the instant application. However, the time for making the assertion required by 37 CFR 1.97(d) that would permit consideration of the information expired June 5, 2004.

While petitioner's candor is appreciated, nevertheless, the circumstances of this case do not demonstrate an extraordinary situation, much less one where justice requires waiver of the rules. Since this application had received an action closing prosecution–the Ex Parte Quayle action of October 22, 2002, which is long before applicant first became aware of the information--regardless of its relevance to this application--a certification has been continuously required since that time as a condition of having an IDS considered. See 37 CFR 1.97(d). The Notice of Allowance of April 20, 2004, did not alter or change the requirement for an assertion, or reset the three month period in which the IDS must be filed at the USPTO in order for it to be considered by the examiner. That is, petitioner, at the time he first became aware of the information, could have made the certification, and submitted the information, certification, petition, and fee to the Office, and as such, the information would have been considered by the Office.[2] Petitioner's, and petitioner's counsel's undue delay in taking appropriate action with respect to this application is not seen to warrant equitable tolling of the period set forth in 37 CFR 1.97(e). See, Vincent v. Mossinghoff, 230 USPQ 621, 625 (D.D.C. 1985).

It is well settled that a party's inadvertent failure to comply with the requirements of the rules or procedures before the USPTO is not deemed to be an extraordinary situation that would warrant waiver of the rules or procedures under 37 CFR 1.183. See Honigsbaum v. Lehman, 903 F. Supp. 8, 37 USPQ2d 1799 (D.D.C. 1995) (Commissioner did not abuse his discretion in refusing to waive requirements of 37 CFR 1.10(c) in order to grant filing date to patent application, where applicant failed to produce "Express Mail" customer receipt or any other evidence that application was actually deposited with USPS as "Express Mail"), *aff'd without opinion*, 95 F.3d 1166 (Fed. Cir.1996); Nitto Chemical Industry. Co., Ltd. v. Comer, 39 USPQ2d 1778, 1782 (D.D.C. 1994) (Commissioner's refusal to waive requirements of 37 CFR 1.10 in order to grant

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[2] The preliminary "Notice of Proposed Rulemaking, Duty of Disclosure" 56 *Fed. Reg.* 37321 (Aug. 6, 1991) at 37326 emphasized that the time that the information was known to any individual designated in 37 CFR 1.55(c) is the time when the information was first discovered, even if applicant's awareness of the materiality came later. This encourages prompt evaluation of the relevance of information and to have a date certain for determining if a certification under 37 CFR 1.97(e) can be properly made. Likewise the 3 month period for submission of the IDS after discovery of the information is familiar to users of the patent system and based on the normal shortened statutory period for reply to an Office action See "Notice of Final Rulemaking, Duty of Disclosure", 57 *Fed. Reg.* 2021, 2027-2028 (January 17, 1992).

priority filing date to patent application not arbitrary and capricious, because failure to comply with the requirements of 37 CFR 1.10 is an "avoidable" oversight that could have been prevented by the exercise of ordinary care or diligence, and thus not an extraordinary situation under 37 CFR 1.183); Gustafson v. Strange, 227 USPQ 174 (Comm'r Pats. 1985) (Counsel's unawareness of 37 CFR 1.8 not extraordinary situation warranting waiver of a rule). Rather, as the USPTO did not cause or contribute to the delay in consideration of the information, this is not an "extraordinary situation" where "justice requires" an extraordinary remedy. See Helfgott & Karras, P.C. v. Dickinson, 209 F.3d 1328, 54 USPQ2d 1425 (Fed. Cir. 2000).

Moreover, petitioner concededly has a suitable remedy on hand for his predicament, that does not require the extraordinary remedy of invoking 37 CFR 1.183. It is brought to petitioner's attention that the PTO will not normally consider an extraordinary remedy, when the rules already provide an avenue for obtaining the relief sought. See Cantello v. Rasmussen, 220 USPQ 664, 664 (Comm'r Pat. 1982). As set forth in MPEP § 609, applicants wishing to have the PTO consider an IDS, where, as apparently herein, the necessary certification cannot be made, should consider the filing of a continuing application under 37 CFR 1.53(b), wherein the applicants may bring the references to the attention of the examiner without having to also tender a certification. Since, as petitioner acknowledges he can file a continuing application, then petitioner is not unduly prejudiced by this decision. As to the term of any forthcoming continuing application, it is noted that the patent statute and regulations do not compel an applicant to claim benefit under 35 U.S.C. § 120 of any earlier application that might shorten the term of any forthcoming patent under 35 U.S.C. § 154. However, should petitioner claim the potential benefits of an earlier application(s) via 35 U.S.C.. § 120 in a forthcoming continuing application, then petitioner must also accept the consequences attendant to that action. See Abbott Laboratories v. Novopharm Ltd., 38 USPQ2d 1309, 1312 (D.C. N. Il. 1996), aff'd 104 F.3d. 1305, 41 USPQ2d 1535 (Fed. Cir. 1997). Indeed, the possible loss of term if a continuing application is filed, should have been the impetus for the diligent filing of the IDS in question. While petitioner may be concerned about the loss of term should a continuing application be necessary to get the contested references considered, the underlying delay necessitating such an action is that of petitioner, not the USPTO. Petitioner may also seek relief under the provisions of 35 U.S.C. § 251 or § 302 and their promulgating regulations, and may also wish to consider 37 CFR 1.313(c)(1) or (c)(3).

This application is being referenced to the Office of Publications for issuance as a patent.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3217.

Brian Hearn
Petitions Examiner
Office of Petitions

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

MAILED

DEC 15 2000

PAT & TM OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CALVIN R. HASTINGS,
ERNEST M. HAUSER,
and
ROBERT C. MILLER

Appeal No. 1998-2875
Application No. 08/471,007

ON BRIEF

Before HAIRSTON, FLEMING, and DIXON, Administrative Patent Judges.

HAIRSTON, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 9, 11, 44 and 45. Claim 12 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The disclosed invention relates to an apparatus for determining the speed of sound or a period of time of an acoustic wave in a fluid flowing in a pipe.

Claim 9 is illustrative of the claimed invention, and it reads as follows:

> 9. An apparatus for determining the speed of sound in a fluid flowing in a pipe comprising:
>
> means for actively testing the flowing fluid with acoustic energy and producing a test signal corresponding to the speed of sound of the fluid, said testing means in contact with the pipe and disposed on the outside of the pipe and acoustic energy follows a path through the pipe wall; and
>
> signal processing means for determining the speed of sound of the flowing fluid based on the test signal, said testing means in communication with said signal processing means.

The reference relied on by the examiner is:

Morrison	4,015,470	Apr. 5, 1977

Claims 9, 11, 44 and 45 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Morrison.

Reference is made to the final rejection, the brief and the answer for the respective positions of the appellants and the examiner.

OPINION

Appellants have not challenged the examiner's finding (Final Rejection, page 2) that Morrison teaches all of the limitations of the claimed invention. Appellants only argument (Brief, pages 10 through 14) is that Morrison does not teach a system that works.

When the examiner cites a reference that expressly anticipates the claimed invention, the burden shifts to appellants to rebut the presumption of operability of the reference by a preponderance of the evidence. In re Sasse, 629 F.2d 675, 681, 207 USPQ 107, 111 (CCPA 1980). In the absence of such evidence, appellants' arguments in the brief are not sufficient to overcome the presumption of validity and correspondingly the enablement of the teachings contained in Morrison.

Appellants' argument (Brief, page 14) concerning the algorithm that would be incorporated in the means-plus-function language of the claims on appeal does not overcome the rejection of record because appellants have not demonstrated which "means" would incorporate the algorithm.

DECISION

The decision of the examiner rejecting claims 9, 11, 44 and 45 under 35 U.S.C. § 102(b) is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

KENNETH W. HAIRSTON)
Administrative Patent Judge)
)
)
MICHAEL R. FLEMING) BOARD OF PATENT
Administrative Patent Judge) APPEALS AND
)
JOSEPH L. DIXON) INTERFERENCES
Administrative Patent Judge)

KWH:hh

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United States Patent and Trademark Office

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Paper No. 19

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SEP 7 2001

In re Application of	)	
HASTINGS et al.	)	DECISION ON PETITION
Application No. 08/471,007	)	TO WITHDRAW THE HOLDING
Filed: June 6, 1995	)	OF ABANDONMENT
For: Apparatus for Determining Fluid Flow	)	

This is a decision on the petition to revive, filed on May 7, 2001, which petition is being treated as a petition to withdraw the holding of abandonment of the above-identified application.

The petition is DENIED.

This application was held abandoned in view of the decision by the Board of Patent Appeals and Interferences (Board) on December 15, 2000 and because the period for seeking court review of the decision has expired and there are no allowed claims. A Notice of Abandonment was mailed on March 12, 2001.

Petitioner argues that the holding of abandonment is incorrect because examiner had indicated that claim 12 would be allowable if rewritten in independent form with all the limitations of its base claim and any intervening claims. Petitioner complains that the Office did not provide the appellant with a period of time in which to bring the objected claim to allowance.

MPEP § 1214.06 sets forth the procedure for treating an application following a Board decision when, as here, an examiner is sustained in whole. As set forth in MPEP § 1214.06:

> I. NO CLAIMS STAND ALLOWED
>
> The proceedings in the application are terminated as of the date of the expiration of the time for filing court action. The application is no longer considered as pending. It is to be stamped abandoned and sent to abandoned files.
>
> Claims indicated as allowable prior to appeal except for their dependency from rejected claims will be treated as if they were rejected. The following examples illustrate the appropriate approach to be taken by the examiner in various

situations:

(A) If claims 1-2 are pending, and the Board affirms a rejection of claim 1 and claim 2 was objected to prior to appeal as being allowable except for its dependency from claim 1, the examiner should hold the application abandoned.

In the present application, claim 12 was objected to prior to appeal as being allowable except for its dependency from base claim 9 and intervening claim 11, and the Board affirmed the rejection of claims 9 and 11. Accordingly, the examiner properly held the application to be abandoned when the time for filing court action had expired. There is no requirement, under these circumstances, that the Office provide the appellant with a period of time in which to bring the objected-to claim into condition for allowance. Rather it is incumbent upon the appellant to write the dependent claim in independent form prior to termination of proceedings in the application. That the appellant failed to do so resulted in the abandonment of the application.

For the above state reasons, the petition is denied.

Petitioner may wish to consider filing a petition to the Commissioner under 37 CFR 1.137 requesting that the application be revived. See MPEP 711.03(c)(III).

Janice A. Falcone

Janice A. Falcone, Director
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

HP/JC

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)
5,562,419	1996-10-08	08/471,292	1995-06-06	13DV12179

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

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	/mm52020/	Date (YYYY-MM-DD)	2008-11-05
Name	Mardson McQuay	Registration Number	52020

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 record s.

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

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

In re Patent No. 5562419
Issue Date: October 8,1996
Application No. 08471292
Filed: June 6,1995
Attorney Docket No. 13DV-12179

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed November 5,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 November 5,2008 . 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.

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)
5883987	1999-03-16	08471370	1995-06-06	ID 016208

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

	Fee	Code
○	3 ½ year	(1551)
◉	7 ½ year	(1552)
○	11 ½ year	(1553)

Small Entity

	Fee	Code
○	3 ½ year	(2551)
○	7 ½ year	(2552)
○	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

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	/DJCushing/	Date (YYYY-MM-DD)	2008-04-28
Name	David J. Cushing	Registration Number	28703

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

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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 record s.

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.

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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

In re Patent No. 5883987
Issue Date: March 16,1999
Application No. 08471370
Filed: June 6,1995
Attorney Docket No. 3408/590

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed April 28,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 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 April 28,2008 . 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 an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

Telephone inquires related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

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

MAR 11 2008

Michael J. Jaro, Esq.
Chief Patent Counsel
Medtronic Vascular
3576 Unocol Place
Santa Rosa CA 95403

Re: Patent Term Extension
Application for
U.S. Patent No. 5,891,190

ACKNOWLEDGMENT OF WITHDRAWAL OF APPLICATION FOR PATENT TERM EXTENSION

This is in response to the "Withdrawal of Application for Extension of Patent Term," filed February, 11, 2008, of the application for patent term extension for U.S. Patent No. 5,891,190, (S8 Over-the-Wire System).

The withdrawal of the application is hereby acknowledged and the application is dismissed.

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

By mail: Mail Stop Hatch-Waxman PTE
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-0100

Telephone inquiries related to this determination should be directed to the undersigned at (571) 272-7755. E-mail inquiries should be directed to mary.till@uspto.gov.

Mary C. Till
Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

cc: Office of Regulatory Policy
Food and Drug Administration
10903 New Hampshire Ave., Bldg. 51, Rm. 6222
Silver Spring, MD 20993-0002

Attention: Beverly Friedman

RE: S8 Over-the-Wire System
FDA Docket No.: 2004E-0301

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 6/11/07

TO SPE OF : ART UNIT 1621

SUBJECT : Request for Certificate of Correction for Appl. No.: 08471919 Patent No.: 6022900

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**.

Valerie Jackson

Certificates of Correction Branch

703-308-9390 ext. 114

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

1623

Art Unit

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 9/22/07

Paper No.: _____

TO SPE OF : ART UNIT 1621

SUBJECT : Request for Certificate of Correction for Appl. No.: 08471919 Patent No.: 6022900

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**.

Valerie Jackson

Certificates of Correction Branch

703-308-9390 ext. 114

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: _____

_____

_____

_____

_____

_____ 1623

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
www.uspto.gov

Paper No. 55

MARK FARBER
ACCORDA THERAPEUTICS, INC.
SIX LANDMARK SQUARE, SUITE 400
STANFORD, CT 06901

COPY MAILED

NOV 12 2003

OFFICE OF PETITIONS

In re Application of :
Andrew Goodearl et al :
Application No. 08/472,065 : DECISION ON PETITIONS
Filed: June 6, 1995 :
Attorney Docket No. 04585/00200H :

This is a decision on the petition under 37 CFR 1.137(b), filed August 21, 2003, to revive the above-identified unintentionally abandoned application. This is also a decision on the petition under 37 CFR 1.181, filed September 5, 2003, requesting withdrawal of the holding of abandonment and withdrawal of the petition under 37 CFR 1.137(b).

The petition under 37 CFR 1.137(b) is **dismissed as moot** in view of the granting of the petition under 37 CFR 1.181 withdrawing the holding of abandonment.

The petition under 37 CFR 1.181 requesting withdrawal of the holding of abandonment is **granted.**

The file record discloses that, on February 25, 2003, the Office mailed out a communication stating that the appeal brief filed on November 7, 2002 was defective and provided applicant the longest of three periods within which to file a proper appeal brief; namely, (1) one month or thirty days from the mailing date of the notification of defective brief; (2) two months from the date of the notice of appeal; or (3) within the period for reply to the action from which this appeal was taken. Additionally, applicants were given extensions of time under 37 CFR 1.136. Since one month or thirty days from the notification of February 25, 2003 was the longer of the other two periods, applicant could obtain extensions of time under 37 CFR 1.136(a) up to and including August 25, 2003 within which to correct the noted deficiencies in the appeal brief.

On August 21, 2003, a petition to revive under 37 CFR 1.137(b), along with three copies of a revised appeal brief were filed. The record further indicates

that a revised appeal brief was also filed on August 22, 2003 (which has not yet made it to the file). However, since extensions of time under the provisions of 37 CFR 1.136(a) were available, as noted above, the filing of the petition to revive on August 21, 2003 was premature. Further, the mailing of the Notice of Abandonment on August 20, 2003 was premature and is hereby vacated.

In view of the above, the holding of abandonment is hereby withdrawn and the application restored to pending status.

As authorized, the five month extension of time fee of $985 due for the filing of the revised appeal brief on August 21, 2003 will be charged to petitioner's Deposit Account No. 03-2095. No fee has been assessed to the petition under 37 CFR 1.137(b).

As requested in the Associate Power of Attorney filed on April 8, 2003, all future correspondence regarding this application file will be mailed to the above-noted address. If petitioner herein desires to receive correspondence at the address noted on the petition, a change of address must be filed. A courtesy copy of this decision is being mailed to the address on the petition.

Any questions concerning this decision may be directed to the undersigned at (703) 305-8680.

This application is being forwarded to Technology Center AU 1647 for appropriate action on the appeal brief filed August 21, 2003.

Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc:

Kristina Bieker-Brady
Clark & Elbing LLP
101 Federal Street
Boston, MA 02110

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Paper No. 35

CLARK & ELBING LLP
176 FEDERAL STREET
BOSTON MA 02110

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SEP 1 7 2001

OFFICE OF PETITIONS

In re Application of
Goodearl et al.
Application No. 08/472,065
Filed: June 6, 1995
Attorney Docket No. 04585/00200H

ON PETITION

This is a decision on the petition filed July 3, 2000, which requests under 37 CFR 1.182 that a previously filed terminal disclaimer be withdrawn. The petition fee has been received.

The petition is granted.

Petitioner asserts that the previously filed tterminal disclaimer was filed in error due to the provisions of 35 USC 121. The examiner has been consulted and has indicated the requested relief can be favorably considered.

This application is being forwarded to the technology Center AU 1646 for correction of PALM and file wrapper records consistent with this decision.

Telephone inquiries relative to this decision should be directed to the undersigned at (703) 305-1820.

Brian Hearn

Brian Hearn
Senior Peittions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examinaiton 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

FINNEGAN HENDERSON FARABOW
GARRETT & DUNNER LLP
1300 I STREET NW
WASHINGTON, DC 20005

COPY MAILED

AUG 3 0 2004

OFFICE OF PETITIONS

In re Application of	:	
Maurice Moncany et al	:	
Application No. 08/472,928	:	DECISION ON PETITION
Filed: June 7, 1995	:	UNDER 37 CFR 1.313
Attorney Docket No. 2356.0062-02	:	

This is a decision on the petition filed June 24, 2004 requesting withdrawal of the instant application from issue.

The petition is **dismissed** as moot in view of the communication received August 17, 2004 withdrawing the instant petition and requesting that the application proceed to issue.[1]

In view of the above, the Office of Publications will be directed to proceed with issuance of the instant application.

Any inquiries concerning this decision may be directed to the undersigned at (703) 305-8680.[2]

Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

[1] Petitioner is advised that the reason for the requested withdrawal from issue does not meet the conditions of 37 CFR 1.313(c) for withdrawing the application from issue. As petitioner seeks receipt of an initialed PTO Form 1449, such request would more appropriately be a petition under 37 CFR 1.181.

[2] Effective September 27, 2004, the new phone number will be 571-272-3218.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : October 05, 2006 **Paper No.:**

TO SPE OF : ART UNIT 1648

SUBJECT : Request for Certificate of Correction on Patent No.: 7,078,516

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:

Certificate 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:

Bruce Campell

SPE: Bruce Campell **Art Unit** 1648

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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MAR 2 7 2007

OFFICE OF PETITIONS

Finnegan, Henderson, Farabow, Garrett & Dunner LLP
901 New York Avenue, NW
Washington, DC 20001-4413

In re Application of
08/472,928
Application No. 08/472,928
Patent No. 7,078,516
Filed: June 7, 1995
Attorney Docket No.

: DECISION GRANTING LETTER

This decision is in response to Patentees's 'STATEMENT REGARDING PATENT TERM ADJUSTMENT" filed on August 8, 2006 requesting that the USPTO review the PTA determination at the time of the issuance of the patent and adjust the calculation to a determination of 0 days. The Office thanks patentees for the good faith and candor in bringing this matter to the attention of the Office

Patentee's letter concerning PTA is **GRANTED. The proper amount of PTA at the time of the issuance of the patent is ZERO (0) days. The Office will adjust the PTA determination to reflect this decision.**

The Office has already approved the certificate of correction. See Certificate of Correction on December 12, 2006.

Patentees assert that 34 days of PTA is improper because the application is not eligible for PTA. In fact, patentees assert that the application filing date is June 7, 1995, prior to GATT implementation and accordingly, the proper term of the patent is 17 years from the earliest effective filing date.

Patentees arguments are persuasive. The Office notes that the application was filed on June 7, 1995. The Office errantly entered a CPA entry on June 2000. However, a review of the file reflects that a 37 CFR 1.129(a) request was filed. Accordingly, the applicantion is considered a PRE-GATT application. Accordingly, the term of the patent is established in 35 U.S.C. 154(c).[1]

Because applicants were providing good faith and candor notice as to the amount of PTA, no fee is being assessed.

Any questions concerning this decision should be directed to Kery Fries, Office of Patent Legal Administration, Office of Deputy Commissioner for Patent Examination Policy, at 571-272-7757.

---

[1]Pursuant to 35 USC 154(c), the term of the patent is the greater of 17 years from issuance of the patent or 20 years from the term established in 35 USC 154(a)(2).

Kery A. Fries
Senior Legal Advisor,
Office of Patent Legal Administration
Office of Deputy Commissioner
For Patent Examination Policy

cc: Adjusted PAIR calculation

Day : Monday
Date: 3/26/2007

PALM INTRANET

Time: 15:32:52

PTA Calculations for Application: 08/472928			
Application Filing Date:	06/07/1995	PTO Delay (PTO):	839
Issue Date of Patent:	07/18/2006	Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	805
Post-Issue Petitions:	0	Total PTA (days):	0
PTO Delay Adjustment:	-34		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
140	03/26/2007	ADJUSTMENT OF PTA CALCULATION BY PTO		34	
131.5	06/28/2006	PTA 36 MONTHS	247		
131	07/18/2006	PATENT ISSUE DATE USED IN PTA CALCULATION			
130	05/12/2006	RECEIPT INTO PUBS			
129	05/11/2006	DISPATCH TO FDC			
128	05/11/2006	APPLICATION IS CONSIDERED READY FOR ISSUE			
127	05/04/2006	ISSUE FEE PAYMENT VERIFIED			
126	05/04/2006	ISSUE FEE PAYMENT RECEIVED			
125	04/03/2006	RECEIPT INTO PUBS			
124	02/10/2006	EXPORT TO INITIAL DATA CAPTURE			
123	02/07/2006	MAIL NOTICE OF ALLOWANCE	47		107
122	02/06/2006	ISSUE REVISION COMPLETED			
121	02/06/2006	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
120	02/06/2006	NOTICE OF ALLOWABILITY			
119	06/24/2004	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
118	06/24/2004	REFERENCE CAPTURE ON IDS			
117	06/24/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
116	10/12/2000	REFERENCE CAPTURE ON IDS			
111	08/22/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
110	08/22/2005	REFERENCE CAPTURE ON IDS			
109	08/22/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			

108	01/24/2006	DATE FORWARDED TO EXAMINER			
107	08/22/2005	REQUEST FOR CONTINUED EXAMINATION (RCE)		429	90
106	01/24/2006	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
105	08/22/2005	WORKFLOW - REQUEST FOR RCE - BEGIN			
104	08/25/2005	WORKFLOW - QUERY REQUEST - FINISH			
103	07/05/2005	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT			
102	07/05/2005	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
101	06/29/2005	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
100	03/07/2005	MISCELLANEOUS COMMUNICATION TO APPLICANT - NO ACTION COUNT			
99	08/30/2004	PETITION DECISION - DISMISSED			
98	06/24/2004	PETITION ENTERED			
97	08/13/2004	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT			
96	08/12/2004	MISCELLANEOUS COMMUNICATION TO APPLICANT - NO ACTION COUNT			
95	06/24/2004	WORKFLOW INCOMING PETITION IFW			
94	06/08/2004	WORKFLOW - QUERY REQUEST - BEGIN			
93	05/24/2004	ISSUE FEE PAYMENT RECEIVED			
92	04/21/2004	SEQUENCE FORWARDED TO PUBS ON TAPE			
91	04/13/2004	WORKFLOW - FILE SENT TO CONTRACTOR			
90	03/19/2004	MAIL NOTICE OF ALLOWANCE			
88	03/18/2004	ISSUE REVISION COMPLETED			
87	03/18/2004	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
86	03/18/2004	CASE DOCKETED TO EXAMINER IN GAU			
85	03/18/2004	NOTICE OF ALLOWABILITY			
84	02/25/2004	NOTICE OF APPEAL FILED			
83	02/25/2004	REQUEST FOR EXTENSION OF TIME - GRANTED			
82	01/29/2004	IFW AMENDED CASE PROCESSING COMPLETE			
81	01/29/2004	DATE FORWARDED TO EXAMINER			
80	01/06/2004	AMENDMENT AFTER FINAL REJECTION		12	78
79	01/06/2004	REQUEST FOR EXTENSION OF TIME - GRANTED			

78	09/25/2003	MAIL FINAL REJECTION (PTOL - 326)	545		75
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76	07/16/2003	DATE FORWARDED TO EXAMINER			
75	11/29/2001	RESPONSE AFTER NON-FINAL ACTION		345	72
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73	01/01/2001	DATE FORWARDED TO EXAMINER			
72.1	12/19/2000	INFORMAL OR NON-RESPONSIVE AMENDMENT AFTER EXAMINER ACTION			
72	12/19/2000	RESPONSE AFTER NON-FINAL ACTION		19	54
57	02/20/2001	REQUEST FOR EXTENSION OF TIME - GRANTED			
56	12/19/2000	REQUEST FOR EXTENSION OF TIME - GRANTED			
55	10/12/2000	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
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53	08/28/2000	NON-FINAL REJECTION			
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51	06/22/2000	CONTINUING PROSECUTION APPLICATION - CONTINUATION (ACPA)			
50	06/22/2000	MAIL EXPRESS ABANDONMENT (DURING EXAMINATION)			
49	06/22/2000	EXPRESS ABANDONMENT (DURING EXAMINATION)			
48	07/01/2000	DATE FORWARDED TO EXAMINER			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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PATREA L. PABST
PABST PATENT GROUP
400 COLONY SQUARE
SUITE 1200
ATLANTA, GA 30361

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JUN 0 8 2005

OFFICE OF PETITIONS

In re Application of
Richard M. Lawn et al
Application No. 08/473,572
Filed: June 6, 1995
Attorney Docket No. 398P1

: DECISION ON PETITION
: UNDER 37 CFR 3.81(b)

This is a decision on the petition under 37 CFR 3.81(b), filed March 11, 2005, to correct assignee data on Issue Fee Transmittal Form PTOL-85(b) so that the Letters Patent will issue to the corrected assignee.

The request is **dismissed**.

Applicants state that inclusion of Genetech, Inc., San Francisco, CA on the Issue Fee Transmittal Form PTOL-85(b) was incorrect. Accordingly, applicants herein request that the patent issue to **Genentech, Inc., South San Francisco, CA**.

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 instant request was not accompanied by a request for a certificate of correction (and fee) as required by 3.81(b). Accordingly, the request cannot be granted.

A review of the assignment records reflects that an assignment to Genentech, Inc., has been recorded and that such assignment was recorded prior to issuance of this application into a patent. Therefore, upon submission of the required certificate of correction and fee, it would be appropriate for the Office to issue a certificate of correction to correct the front page of the Letters Patent to reflect that Genentech, Inc. was the assignee of record at the time of issuance of the instant application into a patent. *Note also* 35 U.S.C. § 152.

In view of the above and **after issuance of the instant application into a patent, the Certificates of Correction Branch is instructed to issue a certificate of correction upon submission by petitioner of a request for a certificate of correction (and fee) which sets forth Genentech, Inc. as the assignee**. No certificate of correction will be issued which sets forth an assignee other than the assignee set forth in the instant request. A copy of this decision ***must*** accompany the request for a Certificate of Correction.

Inquiries concerning this decision should be directed to the undersigned at (571) 272-3220. After the submission of the request for a certificate of correction to correct the assignee data on the front page of the Letters Patent, any questions concerning the issuance of a certificate of correction should be directed to the Certificates of Correction Branch at (703) 305-8309.

Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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JAN 14 2008

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TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO CA 94111-3834

In re Patent No. 5,693,761 QUEEN et al
Issue Date: December 2, 1997
Appl No.: 08/474,040
Filed: June 7, 1995
For: Correction of Inventorship

DECISION GRANTING PETITION
37 CFR 1.324

This is a decision on the petition filed March 23, 2007, (originally filed November 19, 2003) to correct inventorship under 37 CFR 1.324.

The petition is **GRANTED**.

The patented file is being forwarded to Certificate of Corrections Branch for issuance of a certificate naming only the actual inventor or inventors.

William R. Dixon, Jr.
Special Program Examiner
Technology Center 1600

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Alexandria, VA 22313-1450
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JAN 4 2008

DATE: January 3, 2008
TO: Certificates of Correction Branch
FROM: William R. Dixon, Jr.
Technology Center 1600
SUBJECT: REQUEST FOR CERTIFICATE OF CORRECTION

Please issue a Certificate of Correction in U. S. Letters Patent No. 5,693,761 as specified on the attached Certificate.

Please issue certificate with JULIE BURKE as signatory as I will be retired by the time it is prepared. Thank you.

William R. Dixon, Jr.
Technology Center 1600

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE

JAN 4 2003

Patent No. 5,693,761
Patented: December 2, 1997

On petition requesting issuance of a certificate for correction of inventorship pursuant to 35 U.S.C. 256, it has been found that the above identified patent, through error and without deceptive intent, improperly sets forth the inventorship. Accordingly, it is hereby certified that the correct inventorship of this patent is:

Cary L. Queen
Man Sung Co
William P. Schneider
Harold E. Selick

William R. Dixon, Jr.
Special Program Examiner
Technology Center 1600

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

Paper No. 41

Eldora Ellison Floyd
Sterne Kessler Goldstein & Fox
Suite 600
1100 New York Avenue, N.W.
Washington, DC 20005-3934

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APR 0 8 2003

OFFICE OF PETITIONS

In re Application of :
Martin J. MCPHEE et al. :
Application No. 08/474,078 :
Filed: June 7, 1995 :
Attorney Docket No. 1327.044000E :

DECISION
ON PETITION
37 CFR 1.137(b)

This is a decision on the petition filed September 13, 2002, under 37 CFR 1.137(b), requesting revival of the above-identified application.

The petition is GRANTED.

The instant application became abandoned for failure to file a proper reply to the final Office action, mailed January 28, 2002, which set a three (3) month shortened statutory period for reply. A Notice of Abandonment was not mailed in the instant application.

The two-month period for filing an appeal brief in triplicate (accompanied by the fee required by 37 CFR 1.17(c)), runs from the date of this decision.

The Terminal Disclaimer filed on September 13, 2002 has been accepted.

This application is being forwarded to Technology Center 1600 to await petitioners' Brief on Appeal.

Inquiries regarding this communication may be directed to the undersigned at (703) 308-3865.

BethAnne C. Dayoan
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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STERNE KESSLER GOLDSTEIN & FOX
SUITE 600
1100 NEW YORK AVENUE NW
WASHINGTON DC 20005-3934

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SEP 13 2004
OFFICE OF PETITIONS

In re Application of :
Drohan, et al. :
Application No. 08/474,078 : ON PETITION
Filed: June 7, 1995 :
Attorney Docket No. 1327.044000E :
For: SUPPLEMENTED AND
UNSUPPLEMENTED TISSUE SEALANTS,
METHODS OF THEIR PRODUCTION AND USE

This is a decision on the petition under 37 CFR 1.48(a)to correct the inventorship in the above-identified application, the petition under 37 CFR 1.183 requesting waiver of 37 CFR 1.48(a)(2), which requires a statement from the inventor who is to be deleted as a named inventor, and the petition under 37 CFR 1.183 requesting waiver of 37 CFR 1.64, which requires each of the actual inventors to execute the supplemental declaration. All petitions were filed in the same document on October 23, 2003.

The petition under 37 CFR 1.183 to waive 37 CFR 1.64 is **GRANTED**.

The petition under 37 CFR 1.183 to waive 37 CFR 1.48(a)(2) is **GRANTED**.

The petition under 37 CFR 1.48(a) to correct inventorship is **GRANTED**.

An executed declaration in compliance with 37 CFR 1.63 was filed on October 21, 1995. The executed declaration listed three inventors -- MacPhee, Drohan, and Woolverton.

The instant petitions were filed to correct the inventorship by adding Thomas Maciag, Wilson H. Burgess, Gene Liau, Manish Singh and Hernan Nunez as joint inventors and deleting Christopher J. Woolverton as a joint inventor.

37 CFR 1.48(a) requires that an amendment to the named inventive entity be accompanied by: (1) a petition including a statement from each person being added and from each person being deleted as an inventor that the error occurred without deceptive intention on his or her part; (2) an oath or declaration by each actual inventor or inventors as required by 37 CFR 1.63 or as permitted by 37 CFR 1.42, 1.43 or 1.47; (3) the fee set forth in 37 CFR 1.17 (i); and (4) the written consent of any existing assignee, if any of the originally named inventors has executed an assignment.

Originally named joint inventor MacPhee has not signed the declaration listing the corrected inventive entity and originally named joint inventor Woolverton has declined to sign a statement indicating that he is not a joint inventor.

claims and several declarations for patent application on separate occasions. Mr. MacPhee did not respond. The Office views his behavior as a constructive refusal to sign the supplemental declaration. Petitioners have shown (1) that this is an extraordinary situation where (2) justice requires waiver of the rule. *In re Sivertz*, 227 USPQ 255, 256 (Comm'r Pat. 1985).

The petition under 37 CFR 1.183 to waive 37 CFR 1.64 is **granted**.

With respect to Woolverton, petitioners have shown that Woolverton's attorney received a letter from petitioners dated April 10, 2003, that enclosed a copy of the claims that were pending in the application and in other related applications. The letter explained the reasons why petitioners believe that Woolverton did not contribute inventively to the above-identified application and requested Woolverton's cooperation in removing his name as joint inventor for this invention. After a number of telephonic interviews and letters, Woolverton refused to sign a declaration/statement that he was not a co-inventor of the invention in a letter dated June 18, 2003.

It is settled that when the question of inventorship between diverse parties is vigorously contested, the USPTO will not relax the requirements of 37 CFR 1.48 by way of 37 CFR 1.183. See In re Cooper, 230 USPQ 638, 639 (Comm'r Pat. 1985). It is also a well settled principle in patent law that the owner of the invention has the right to do with the invention as he sees fit. A review of USPTO assignment records reveals that Mr. Woolverton and all named joint inventors have executed assignments of all their rights to The American National Red Cross. The American Nation Red Cross controls 100% of the invention. The American National Red Cross has acquiesced to deletion of Mr. Woolverton as a joint inventor. The assignee of the entire right, title and interest in the application may conduct prosecution of a national patent application to the exclusion of the inventive entity. 37 CFR 3.71(a) and (b)(1).

Therefore, the petition under 37 CFR 1.183 to waive 37 CFR 1.48(a) (2) is **granted**.

Newly named inventors Burgess, Nunez, Singh, Liau, and Maciag have provided a statement that the error in not naming them as inventors occurred without deceptive intent and have signed a declaration listing the corrected inventive entity.

Petitioners have satisfied the requirements of 37 CFR 1.48(a): Petitioners requested correction of inventorship and set forth the desired inventorship change; each person being added as an inventor provided a statement that the error in inventorship occurred without deceptive intention on his part and petitioners have obtained waiver of 37 CFR 1.48(a)(2) for Woolverton's statement deleting himself as inventor; the processing fee has been paid; and written consent of the assignee was submitted. Having obtained a waiver of 37 CFR 1.64, petitioners have satisfied the declaration component of 37 CFR 1.48(a).

Petitioners have shown that this nonprovisional application, as filed, through error and without deceptive intent, improperly set forth the inventorship, and, accordingly, this application has been corrected in compliance with 37 CFR 1.48(a). The petition is **granted**. The inventorship of this application has been changed by the addition of Wilson H. Burgess; Hernan Nunez; Manish Singh; Gene Liau; and Thomas Maciag and the deletion of Christopher J. Woolverton.

Please find enclosed a corrected filing receipt that reflects the corrected inventorship.

It appears that petitioners' credit card was charged only one petition fee. Three petitions were filed. Pursuant to petitioners' authorization, deposit account no. 19-0036 will be charged two additional $130.00 petition fees.

After the mailing of this decision, the application will be forwarded to Technology Center 1600.

Telephone inquiries concerning this matter may be directed to the undersigned at 703 308-6712.

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

enclosure: corrected filing receipt

#23

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TECHNOLOGY CENTER 3600

In re Patent No. GUTH, THEODORE E.
Issue Date: August 18, 1998
Appl No.: 08/474,097
Filed: June 07, 1995
For: COMPOSITE MASONRY BLOCK

DECISION GRANTING PETITION
37 CFR 1.324

Certificate
APR 0 6 2006
of Correction

This is a decision on the petition filed August 11, 2005 to correct inventorship under 37 CFR 1.324.

The petition is granted.

The patented file is being forwarded to Certificate of Corrections Branch for issuance of a certificate naming only the actual inventor or inventors.

David J. Bagnell
Supervisory Patent Examiner
Art Unit 3672
Technology Center 3600

MERCHANT & GOULD PC
P.O. BOX 2903
MINNEAPOLIS, MN 55402-0903

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)
5989565	1999-11-23	08474120	1995-06-07	99-502-US

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

	Fee	Code
◯	3 ½ year	(1551)
◯	7 ½ year	(1552)
◯	11 ½ year	(1553)

Small Entity

	Fee	Code
◯	3 ½ year	(2551)
◉	7 ½ year	(2552)
◯	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

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	/Frederick H. Colen/	Date (YYYY-MM-DD)	2008-06-20
Name	Frederick H. Colen	Registration Number	28061

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 record s.

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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In re Patent No. 5989565
Issue Date: November 23,1999
Application No. 08474120
Filed: June 7,1995
Attorney Docket No. 92-245-CIP

:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)

This is a decision on the electronic petition, filed June 20,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 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 June 20,2008 . 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 an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

Telephone inquires related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

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)
6007818	1999-12-28	08474190	1995-06-07	23350-8

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

	Fee	Code
○	3 ½ year	(1551)
◉	7 ½ year	(1552)
○	11 ½ year	(1553)

Small Entity

	Fee	Code
○	3 ½ year	(2551)
○	7 ½ year	(2552)
○	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

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	/B. J. Sadoff/	Date (YYYY-MM-DD)	2008-01-03
Name	B. J. Sadoff	Registration Number	36663

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 record s.

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

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

In re Patent No. 6007818
Issue Date: December 28,1999
Application No. 08474190
Filed: June 7,1995
Attorney Docket No. 23350-8

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed January 3,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 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 January 3,2008 . 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 an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

Telephone inquires related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

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)
6702391	2004-03-09	08474314	1995-06-07	3725-901

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

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	/TODD P. BLAKELY/	Date (YYYY-MM-DD)	2009-01-09
Name	TODD P. BLAKELY	Registration Number	31328

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.**

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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 record s.

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

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

In re Patent No. 6702391
Issue Date: March 9,2004
Application No. 08474314
Filed: June 7,1995
Attorney Docket No. 27273/90100

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed January 9,2009 ,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 January 9,2009 . 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

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov

Paper No. 42

Zoltick Technology Law Group, PLLC
21515 Ridgetop Circle, Suite 200
Loudon Tech Center
Sterling, VA, 20166

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NOV 1 9 2001

OFFICE OF PETITIONS
ON PETITION

In re Application of:
Klainer, *et al.*
Application No. 08/474,535
Filed: 06/07/1995
Attorney Docket No. 00131-106-USP

This is a decision on the September 28, 2001 petition under 37 C.F.R. §1.137(b) to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned because Petitioner's appeal to the Board of Appeals was dismissed for failure to timely pay the filing fee for the appeal brief. Because there were no allowed claims, this left the application in an abandoned status.

This application is being revived solely for purposes of continuity with the Continuing Prosecution Application (CPA) filed with this petition and is again abandoned in favor of the CPA.

The terminal disclaimed filed with this petition has been entered and made of record. Effective September 8, 2000, 37 C.F.R. §1.137(c)(1) has been added to state that a terminal disclaimer filed pursuant to this rule must dedicate to the public a terminal part of the term of any patent granted thereon equivalent to the lesser of: 1) the period of abandonment of the application; or 2) the period extending beyond twenty years from the date on which the application for the patent was filed in the United States, or, if the application contains a specific reference to an earlier filed application(s) under 35 U.S.C. 120, 121 or 365(c), from the date on which the earliest such application was filed. 65 Fed. Reg. 54,674 (2000). Accordingly, the period of the terminal disclaimer filed will be equivalent to the lesser of period (1) or (2), as noted above, for this application.

This application is being forwarded to Files Repository.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 306-5593.

Scott M. Ledford
Petitions Attorney
Office of Petitions
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
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TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO, CA 94111-3834

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SEP 25 2007

OFFICE OF PETITIONS

In re Patent No. 5,792,664 :
Issue Date: August 11, 1998 :
Application No. 08/474,997 : NOTICE
Filed: June 7, 1995 :
Attorney Docket No. 026693-00310US :

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
Petitions Attorney
Office of Petitions

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)
5592018	1997-01-07	08475796	1995-06-07	252016-3620

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

	Fee	Code
○	3 ½ year	(1551)
○	7 ½ year	(1552)
◉	11 ½ year	(1553)

Small Entity

	Fee	Code
○	3 ½ year	(2551)
○	7 ½ year	(2552)
○	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

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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

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	/Daniel R. McClure/	Date (YYYY-MM-DD)	2009-02-25
Name	Daniel R. McClure	Registration Number	38962

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.**

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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 record s.

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

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

In re Patent No. 5592018
Issue Date: January 7,1997
Application No. 08475796
Filed: June 7,1995
Attorney Docket No. 252016-3620

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed February 25,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 February 25,2009 . 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

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

DEC 23 2005

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER
LLP
901 NEW YORK AVENUE, NW
WASHINGTON DC 20001-4413

In re Application of	:
Marc Alizon et al	:
Serial No.: 08/475,822	: SUSPENSION OF ACTION
Filed: June 7, 1995	:
Attorney Docket No.: 3495.0010-24	:

This is in reply to the petition under 37 CFR 1.103 to suspend action on this application at applicant's request for a period of six months, filed November 28, 2005.

A review of the file history shows that applicants replied to the non-Final Office action mailed April 25, 2005, on October 25, 2005, including a request and fee for a three month extension of time. Applicants request that action on this application be suspended for six months in order to determine the correct assignees so that a terminal disclaimer can be filed..

§ 1.103 Suspension of action by the Office.

(a) Suspension for cause . On request of the applicant, the Office may grant a suspension of action by the Office under this paragraph for good and sufficient cause. The Office will not suspend action if a reply by applicant to an Office action is outstanding. Any petition for suspension of action under this paragraph must specify a period of suspension not exceeding six months. Any petition for suspension of action under this paragraph must also include:
(1) A showing of good and sufficient cause for suspension of action; and
(2) The fee set forth in § 1.17(h), unless such cause is the fault of the Office.

Applicants' petition states that they are making an effort to determine the correct ownership of the instant application and of US 6,627,395 in order for a proper terminal disclaimer to be filed. Applicants note that the application and patent must be commonly owned in order for a terminal disclaimer to be proper. Applicants also indicate that the correct inventorship must be determined. Applicants have submitted a complete reply to the last Office action.

It is noted that the rule permits suspension of action for "good and sufficient cause" as evidenced by a showing. Although the application is under rejection for obvious double patenting, which may be overcome by filing of a terminal disclaimer, applicants have not filed such disclaimer to date. Currently the application is under assignment to two different assignees. In order for a terminal disclaimer to be filed the instant application and the application or patent over which the rejection has been made must be commonly owned or assigned. This appears to not be the situation here. Applicants have indicated that Institut Pasteur is under the obligation of determining the correct assignees and preparing the appropriate legal documents and that this is

difficult as the earliest claimed priority date in both application and patent is over 20 years ago. No showing as to what effort is being to resolve the problem made has been given, thus no sufficient showing has been made. Further, one of the requirements of a terminal disclaimer is that the inventions in the affected applications must have been commonly owned or subject to common assignment at the time the respective inventions were made, not just commonly owned at the present time (although this is also a requirement). A review of the inventorship of the application and patent over which the rejection has been made shows no inventors in common. Thus the inventorship at the time of filing is presumed to be correct in each application; otherwise it should have been corrected at an earlier date.

Further, due to the inordinately long prosecution (over ten years) of this application, as well as the claim of priority extending back more than 10 years earlier than the filing date, suspension of action would not be appropriate. The Office is under obligation to bring prosecution to conclusion as soon as possible.

In view of the above reasons the petition is **DENIED**.

Any renewed petition must be submitted within TWO MONTHS of the mail date of this decision in order to be considered timely.

The examiner has recently mailed (December 5, 2005) a Final Office action to applicants. Applicants, in view of the above decision, remain under obligation to reply thereto within the time period set therein or as extended under 37 CFR 1.136(a).

Should there be any questions with respect to this action, please contact William R. Dixon, Jr., by mail addressed to: Director, Technology Center 1600, P. O. BOX 1450, ALEXANDRIA, VA 22313-1450, or by telephone at 571-272-0519 or by facsimile transmission at the Office general facsimile number, 571-273-8300.

Jasemine C. Chambers
Director, Technology Center 1600

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: 18

DATE : Dec. 20, 2005

TO SPE OF : ART UNIT 1642 (*Jeffrey Siew*)

SUBJECT : Request for Certificate of Correction on Patent No.: 5,747,037

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:
Palm location **7580, Certificates of Correction Branch – South Tower – 9A22**
If response is for an IFW, **return to employee (named below) via PUBSCofC Team in MADRAS.**

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 (COCIN)? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please see the References Cited, the Examiner's amendment and the claims. Your denial or approval decision is needed below.

ALSO SEE THE COVER SHEETS ON THE RIGHT FLAP.

Thank You For Your Assistance

sp STACY POWELL
Certificates of Correction Branch
Tel. No. 703-308-9390 x120

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:

CORRECTIONS APPROVED / BUT COL 3 / LINES 6 - 7 (APPROX) PROBABLY CORRECT LINE

DELETE "IT'S" AND INSERT "ITS"

NOT SURE WHAT COVER SHEETS ON RT. FLAP ARE BEING REFERRED TO

PHILIP GAMBEL 4/27/06 1644

Christine Chen — SPE

164K — Art Unit

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)
5,759,856	1998-06-02	08/477,071	1995-06-07	475574

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

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	/Curtis A. Vock/	Date (YYYY-MM-DD)	2008-04-02
Name	Curtis A. Vock	Registration Number	38356

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 record s.

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

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

In re Patent No. 5759856
Issue Date: June 2,1998
Application No. 08477071
Filed: June 7,1995
Attorney Docket No. 06237/002001

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed April 2,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 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 April 2,2008 . 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 an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

Telephone inquires related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

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.go

Mitja Hinderks
1015 Gayley Avenue No. 1228
Los Angeles, CA 90024

MAILED

OCT 25 2005

Director's Office
Group 3700

Paper No. 45

In re Patent Application of
HINDERKS, MITJA V.
Appl No.: 08/477,703
Filed: June 07, 1995

DECISION GRANTING PETITION
37 CFR 1.181

This application is before the Director of Technology Center 3700 for reconsideration of the non-entry of the after-final amendment, filed April 25, 2001. The petition was originally filed on December 27, 2001 and is considered pursuant to 37 CFR 1.181. No fee is required for this petition.

The petition is granted.

A review of the file indicates that a first final rejection was mailed on May 1, 1998. Since this application meets the requirements set forth in 37 CFR 1.129, applicant's submission filed October 30, 1998 was entered, the finality of the previous office was withdrawn, and prosecution continued. A second final rejection was mailed on October 25, 2000. Applicant filed a petition for a 3-month extension of time with a Notice of Appeal and an after-final amendment on April 25, 2001. The examiner issued an advisory action mailed June 13, 2001 indicating that the after-final amendment would not be entered. Although the petition argues that the amendment should have been entered after the final rejection, this argument is dismissed as moot in view of the fact that applicant filed a proper request under 37 CFR 1.129 on October 24, 2001 (with a petition for a 4-month extension of time) to have the amendment of April 25, 2001 entered.

On October 25, 2001, an "Appeal Brief" was filed. However, this filing argued the non-entry of the amendment of April 25, 2001. The argument was not proper as the non-entry of an amendment is not an appealable issue. The argument was also moot because applicant had filed a proper request on the previous day, which withdrew the finality of the previous office action and entered the amendment of April 25, 2001. Since the finality of the previous office action had been withdrawn and the amendment of April 25, 2001 entered, the application was due for an office action on the merits regarding the amended claims. The application was not ripe for appeal on October 25, 2001, so the Notice of the Defective Appeal Brief mailed November 30, 2001 is hereby vacated.

In summary, the request under 37 CFR 1.129 on October 24, 2001 was proper. The present status of the application is that the finality of the office action of October 25, 2000 is withdrawn and the amendment filed April 25, 2001 is entered. It is noted that a revocation of power of attorney and a change of address was filed on January 23, 2002. The application will be forwarded to the Technical Support Staff for processing of the revocation of power of attorney and a change of address prior to the mailing of this decision. The application will then be forwarded to the examiner for action in accordance with this decision and the provisions set forth in 37 CFR 1.129 and MPEP 706.07(g).

Richard A. Bertsch, Director
Technology Center 3700

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Paper No. 25

THOMAS J. SCOTT, JR.
HUNTON & WILLIAMS
1900 K STREET, N.W.
12TH FLOOR
WASHINGTON, D.C. 20006

COPY MAILED

MAR 0 7 2001

OFFICE OF PETITIONS
A/C PATENTS

In re Application of
John C. Harvey et al.
Application No. 08/477,805
Filed: June 7, 1995
Attorney Docket No. 05634.0197

NOTICE

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**.

Inquiries related to this communication should be directed to the Office of Petitions Staff at (703) 305-9285.

This file is being forwarded to Technology Center 2600.

Irvin Dingle
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY OF COMMERCE AND
COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, DC 20231

8/17/01

Patent No. :5730979
Inventor(s) : Bazin et al.
Issued : 5/24/1998
Title : LO – CD2a Antibody and Uses Therof for inhibiting T-Cell Activation and Proliferation
Atty.doc./File No.

Request for Certificates of Correction

Consideration has been given to your request for the issuance of a Certificate of Correction, for the above – identified patent under the provisions of CFR 1.322.

Inspection of the application for the patent reveals that item [75] is printed in accordance with the record. Therefore being no fault on the Patent and Trademark Office, It has no authority to issue a certificate of correction under the provision of 1.322.

In view of the forgoing, your request in this matter, is hereby denied.

Future written correspondence concerning this matter should be filed and directed to Decisions & Certificates of Correction Branch.

Henry Randall
Cecelia Newman
Decisions & Certificates
of Correction Branch
(703) 308-9390 Ext. 108

Ramond J. Lillie
Carella Bryne Bain Gilfillan Cechi
Stewart and Olstein
6 Becker Farm Road
Roseland, NJ 07068

HR/CBN

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APR 27 2000

#92

AMY L COLLINS
CHIRON CORPORATION
INTELLECTUAL PROPERTY R440
4560 HORTON STREET
EMERYVILLE , CA 94605

In re Application of :
Cynthia Cowgill et al :
Serial No.: 08/477,984 : PETITION DECISION
Filed: June 7, 1995 :
Attorney Docket No.: 1087.001 :

This is in response to applicant's petition under 37 CFR 1.181, filed March 1, 2000, requesting reopening of prosecution based on the examiner's failure to timely act.

BACKGROUND

A review of the file history shows that the examiner mailed a Final Office action to applicants on December 4, 1998, setting a three month shortened statutory period for response and setting forth three new rejections based on a new reference, Halloran, in combination with references already of record. Halloran issued January 27, 1998 (filing date of parent being September 8, 1994), and was likely not available at the time the previous Office action was prepared on March 17, 1998. Whether the new rejections were necessitated by applicants' amendments to the claims is not stated. Applicants replied on June 4, 1999, requesting and submitting the fee for a three month extension of time, with an amendment consisting of argument and an affidavit under 37 CFR 1.131 swearing behind the Halloran reference. A Notice of Appeal was concurrently filed with the appeal fee. Applicants also conducted a telephone interview with the examinr on June 25, 1999, to ascertain the disposition of the amendment and affidavit. At that time, no decision or evaluation had been completed even though the examiner had received the application approximately two weeks earlier. Applicants state that they continued to call the Office and examiner regularly to determine the status of the application and the amendment disposition without success until an Advisory Action was mailed on January 13, 2000. Immediately prior to this applicants were constrained to file an Appeal Brief based on the Final Office action without regard to the subsequently filed amendment. The Advisory action indicates that the amendment filed June 4, 1999, has been entered (even though the paper has written on it "Do Not Enter"), but that the affidavit is insufficient to overcome the reference for a number of reasons explained by the examiner. Applicants' then filed this petition to reopen prosecution based on lack of opportunity to address the outstanding issues in the file.

DISCUSSION

Prosecution before the Office of pending applications is to be done expeditiously. It is general Office policy to reply to an applicants' communication to the Office within two months of receipt

pplus processing time and to reply to amendments submitted after a Final Office action within 30 days of receipt, including processing time. With respect to the amendment submitted on June 4, 1999, in reply to a Final Office action, this was not done. It appears that the examiner delayed more than seven months after receipt of the amendment and affidavit despite repeated requests by applicants for action thereon before making a decision denying applicants' arguments as insufficient. However, even more incorrect was the examiner's application of a new reference not previously available in a Final Office action without any indication that the reference application was necessitated by amendments to the application. A review of those amendments does show that new limitations were added, but not that such limitations could not have been reasonably predicted by the examiner in view of the art previously cited and applied. In fact the amendments to claim 1 merely define the specific yeast cells which are used and expressly limit the cation exchange to a single step although such exchange appears only once in the claim suggesting that it is only a single step anyway. In view of this, the finality of the Office action of December 4, 1998, was improper.

With respect to the evaluation of the affidavit submitted with the amendment of June 4, 1999, the examiner is correct in the evaluation. Applicants present what appears to be a process agenda for the process claimed herein. However, the process consists of seven steps whereas the claimed process consists of only four steps. Further, the second and third sheets have been so redacted as to present meaningless information. It is unclear whether the statement at the top of page three applies to information from the previous page on to information subsequent to the statement. Further, such statement does not evidence constructive reduction to practice or even a positive conception, only mere speculation. Mere speculation is insufficient to overcome a reference under 37 CFR 1.131.

DECISION

Applicant's petition is **GRANTED**. The finality of the last Office action is withdrawn. The reply filed June 4, 1999, will be considered as a reply to a non-final Office action.

The Notice of Appeal will be withdrawn until such time as the application has been properly finally rejected. A new Notice of Appeal may be filed at that time without additional fee. Should this application be allowed without the necessity of an appeal, refund of the fees for the Notice of Appeal and Appeal Brief may be requested.

The application will be returned to the examiner for further consideration, including all arguments presented in the Appeal Brief which will be considered a supplemental reply to the Office action of December 4, 1998, not inconsistent with this decision.

Should there be any questions with respect to this decision, please contact William R. Dixon, Jr., by mail addressed to: Director, Technology Center 1600/2900, Washington, D.C. 20231, or by telephone at (703)308-3824 or by facsimile transmission at (703) 305-5408.

John E. Kittle

John Kittle
Director, Technology Center 1600/2900

UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, VA 22313-1450
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MAR 11 2008

Michael J. Jaro, Esq.
Chief Patent Counsel
Medtronic Vascular
3576 Unocol Place
Santa Rosa CA 95403

Re: Patent Term Extension
Application for
U.S. Patent No. 5,836,965

ACKNOWLEDGMENT OF WITHDRAWAL OF APPLICATION FOR PATENT TERM EXTENSION

This is in response to the "Withdrawal of Application for Extension of Patent Term," filed February, 11, 2008, of the application for patent term extension for U.S. Patent No. 5,836,965, (S8 Over-the-Wire System).

The withdrawal of the application is hereby acknowledged and the application is dismissed.

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

By mail: Mail Stop Hatch-Waxman PTE
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-0100

Telephone inquiries related to this determination should be directed to the undersigned at (571) 272-7755. E-mail inquiries should be directed to mary.till@uspto.gov.

Mary C. Till
Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

cc: Office of Regulatory Policy
Food and Drug Administration
10903 New Hampshire Ave., Bldg. 51, Rm. 6222
Silver Spring, MD 20993-0002

Attention: Beverly Friedman

RE: S8 Over-the-Wire System
FDA Docket No.: 2004E-0306

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

DEC 31 2007

Michael A. Gollin
Venable LLP
575 7th Street NW
Washington DC 20004

In re: Patent Term Extension
Application for
U.S. Patent No. 5,716,981

DECISION DENYING REQUEST FOR RECONSIDERATION IN APPLICATION FOR PATENT TERM EXTENSION FOR U.S. PATENT NO. 5,716,981

Dear Mr. Gollin:

This is in response to the Request for Reconsideration of Final Determination filed on May 3, 2007 ("the Request"), in the application for extension of the term of U.S. Patent No. 5,716,981 ("the '981 patent") under 35 U.S.C. § 156 ("the PTE Application"). The Request asks the United States Patent and Trademark Office ("USPTO") to reconsider, in conjunction with the Food and Drug Administration ("FDA"), the FDA's determination of the length of the regulatory review period, which was used to calculate the period of extension set forth in the Notice of Final Determination mailed by the USPTO on April 3, 2007. Because the USPTO has no authority to change or redetermine the regulatory review period determined by the FDA, Applicant's Request is DENIED.

A. Factual Background

On March 4, 2004, the FDA approved the TAXUS® Express2™ Paclitaxel-Eluting Coronary Stent System, which is the subject of Pre-Market Approval Application (PMA) P030025.

On May 3, 2004, Angiotech Pharmaceuticals, Inc. ("Applicant"), the owner of the '981 patent, filed the PTE Application with the USPTO in compliance with 37 CFR § 1.740 to extend the term of the '981 patent. In the PTE Application, Applicant identifies October 12, 2000, which is the initiation date of the clinical trial (TAXUS I) in Germany for the Paclitaxel-Eluting Coronary Stent

System, as the date a clinical investigation on humans involving the device began according to 37 CFR § 1.777(c)(1). Based on the October 12, 2000, first human clinical trial date, Applicant calculates in the PTE Application a testing period of 866 total days. Applicant also calculates in the PTE Application an approval period of 374 total days, resulting in an eligible extension of 807 days for the '981 patent.

On May 24, 2004, the USPTO requested FDA's assistance in determining the '981 patent's eligibility for patent term extension.

In a letter dated February 24, 2006, the FDA advises the USPTO that the TAXUS® Express2™ Paclitaxel-Eluting Coronary Stent System has undergone a regulatory review period and that the approval of the TAXUS® Express2™ Paclitaxel-Eluting Coronary Stent System represents the first permitted commercial marketing or use of the product.

On April 4, 2006, the USPTO requested that FDA determine the product's regulatory review period.

In a letter dated June 14, 2006, the FDA advises the USPTO that it has determined the total length of the regulatory review period for the TAXUS® Express2™ Paclitaxel-Eluting Coronary Stent System to be 716 days. The FDA states in the June 2006 letter that of the 716 days, 456 days occurred during the testing phase and 260 days occurred during the approval phase. The FDA did not use the October 12, 2000, date, which was identified by Applicant as the initiation date of the clinical trial (TAXUS I) in Germany for the Paclitaxel-Eluting Coronary Stent System, in determining the length of the testing phase. Instead, the FDA determined the length of the testing phase from the date of March 21, 2002, which is when FDA records indicate that the investigational device exemption (IDE) was substantially complete for permitting clinical studies to have begun.

The FDA's determination of the regulatory review period for the TAXUS® Express2™ Paclitaxel-Eluting Coronary Stent System was published in the Federal Register of July 5, 2006 (71 Fed. Reg. 38170). Pursuant to 35 U.S.C. § 156(d)(2)(B)(i) and (ii), the July 5, 2006, publication states that any interested person may file (i) within 180 days, a due diligence petition or (ii) within 60 days, a request for an informal hearing on the determination.

In a letter dated January 10, 2007, the FDA confirms that (i) the 180-day period for filing a due diligence petition has expired, (ii) the FDA has received no such petition, and (iii) the FDA considers the regulatory review period determination to be final.

On April 3, 2007, the USPTO mailed a Notice of Final Determination in which the USPTO states that the period of extension for the '981 patent was determined to be 488 days. The Notice also states that the 488 day period of extension was calculated using the FDA's determination of the length of the regulatory review period published in the July 5, 2006, Federal Register. In the Notice, the USPTO gives Applicant the opportunity to file within one month a request for reconsideration "of this final determination as to the length of extension of the term of the patent."

On May 3, 2007, Applicant filed a Request for Reconsideration of Final Determination. The Request asks the USPTO to reconsider, in conjunction with the FDA, the FDA's determination of the length of the regulatory review period, which was used by the USPTO to calculate the period of extension set forth in the April 3, 2007, Notice of Final Determination.

B. Decision

1. The Plain Language of 35 U.S.C. § 156(d) Shows That the Determination of the Regulatory Review Period Is Committed by Statute to the FDA

The terms of 35 U.S.C. § 156(d) are clear and unambiguous. After a copy of the extension application is forwarded by the USPTO to the appropriate Secretary, the Secretary receiving the application shall review the dates contained in the application and determine the applicable regulatory review period. Specifically, 35 U.S.C. § 156(d)(2)(A) states:

> (A) Within 60 days of the submittal of an application for extension of the term of a patent under paragraph (1), The Commissioner shall notify –
>
> * * *
>
> (ii) the Secretary of Health and Human Services if the patent claims any other drug product, a medical device, or a food additive or color additive or a method of using or manufacturing such a product, device, or additive and if the product, device, and additive are subject to the Federal Food, Drug, and Cosmetic Act,
>
> of the extension application and shall submit to the Secretary who is so notified a copy of the application. Not later than 30 days after the receipt of an application from the Commissioner, *the Secretary* receiving the application *shall review the dates* contained in the application pursuant to paragraph (1)(C) *and determine the applicable regulatory review period*, shall notify the Commissioner of the determination, and shall publish in the Federal Register a notice of such determination. (emphasis added).

The statute thus plainly mandates the FDA to determine the regulatory review period. The statute does not authorize the USPTO to change or redetermine the regulatory review period determined by the FDA.

Here, the USPTO requested that the FDA determine the regulatory review period for the TAXUS® Express2™ Paclitaxel-Eluting Coronary Stent System by letter dated April 4, 2006. The

FDA advised the USPTO that it had determined the total length of the regulatory review period for the TAXUS® Express2™ Paclitaxel-Eluting Coronary Stent System by letter dated June 14, 2006. Subsequent to the publication of the FDA-determined regulatory review period in the Federal Register of July 5, 2006 (71 Fed. Reg. 38170), the FDA sent the USPTO a letter dated January 10, 2007, confirming that the FDA's regulatory review period determination is final. In accordance with 35 U.S.C. § 156(d), the USPTO has no authority to change or redetermine the regulatory review period determined by the FDA.

2. Judicial Precedent Confirms That the USPTO Has No Authority to Change or Redetermine the Regulatory Review Period Determined by the FDA

Judicial precedent confirms that the FDA alone, and not the USPTO, is directed by statute to determine the regulatory review period. In Astra v. Lehman, 71 F.3d 1578 (Fed. Cir. 1995), the Federal Circuit affirmed a judgment by the United States District Court for the District of Columbia that the USPTO is not authorized to redetermine or set aside the regulatory review period determined by the FDA.

Appellant Aktiebolaget Astra ("Astra") had a patent for a method of combating viral infections, and applied to the USPTO pursuant to 35 U.S.C. § 156 to extend the term of its patent. The USPTO requested the FDA to make a determination of the review period as required by 35 U.S.C. § 156(d). Astra did not contest the FDA's determination of the regulatory review period by requesting either a revision or a hearing pursuant to 21 CFR §§ 60.24, 60.26. Instead, Astra brought a declaratory judgment action against the USPTO claiming that the calculated period of extension was too short due to the FDA's determination of the regulatory review period. The district court affirmed summary judgment for the USPTO, holding that the plain meaning of the statute had been followed, and that the USPTO did not have the authority to change the FDA's determination of the review period made under the statute.

In affirming the decision of the district court, the Federal Circuit focused on the issue of "whether the Commissioner [of Patents and Trademarks] has authority to review and set aside a final determination of a regulatory review period made by the Secretary [of Health and Human Services]." Astra, 71 F.3d at 1580. The Federal Circuit analyzed both the language and legislative history of 35 U.S.C. § 156. See id. at 1580-81. It concluded that "the language of section 156(d)(2)(A) is unambiguous and uncontroverted" and mandates that the FDA alone, not the USPTO, determines the regulatory review period. Id. at 1581. The Federal Circuit further concluded that the legislative history provides "a contemporaneous and clear confirmation of [its] reading of the statute." Id.

Therefore, in accordance with judicial precedent, the USPTO has no authority to change or redetermine the regulatory review period determined by the FDA.

3. Applicant's Argument That It Is Appropriate for the USPTO to Consider And to Determine - With FDA - Whether the Regulatory Review Period Was Correctly Calculated is Unpersuasive

At page 1 and elsewhere within the PTE Application, Applicant acknowledges that the FDA, as the delegate of the Secretary of Health and Human Services, is given the statutory duty to determine the regulatory review period. However, Applicant repeatedly states in the PTE Application that it is appropriate for the USPTO to consider and to determine – with FDA – whether the regulatory review period was correctly calculated. For example, at page 3 of the PTE Application, Applicant states that "it is appropriate for the PTO to consider with FDA whether criteria used in determining the testing phase of the regulatory review period, and relied upon by the PTO in issuing the PTE, were contrary to the governing patent law."

The same argument was squarely addressed and rejected by the Federal Circuit in Astra. See 71 F.3d at 1580-81. Specifically, Astra argued "that section 156(d)(1) requires both the Commissioner and the Secretary to make the determination" of the regulatory review period. Id. at 1581. The Federal Circuit disagreed. In particular, the court stated that "[a]lthough the statute provides that the Commissioner and the Secretary are jointly to determine the 'period of the extension,' the statute, in section 156(d)(2)(A)(ii) . . ., is clear that the length of the 'regulatory review period,' shall be determined by the Secretary." Id. The court further states that "[s]ection 156(d)(1) does not contradict that interpretation." Id. Thus, it is clear that determination of the regulatory review period is outside the duties of the USPTO in their role in administration of 35 U.S.C. § 156.

In light of the Federal Circuit's decision in Astra, Applicant's argument that it is appropriate for the USPTO to consider and to determine - with FDA - whether the regulatory review period was correctly calculated is unpersuasive.

4. Conclusion

For the reasons stated above, the USPTO has no authority to change or redetermine the regulatory review period determined by the FDA, and Applicant's Request for Reconsideration is **DENIED**. This is a final agency decision.

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

By mail: Mail Stop Hatch-Waxman PTE
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-7728

Telephone inquiries related to this determination should be directed to Raul Tamayo at (571) 272-7728. E-mail inquiries should be directed to Raul.Tamayo@uspto.gov.

Mary C. Till
Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

cc: Office of Regulatory Policy
HFD-7
5600 Fishers Lane (Rockwall II Rm 1101)
Rockville, MD 20857

Attention: Beverly Friedman

Re: TAXUS® EXPRESS2™
(Paclitaxel-Eluting Coronary Stent System)
FDA Docket No.: 2004E-0396

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Paper No. 35

DANIEL P MORRIS
IBM CORPORATION
INTELLECTUAL PROPERTY LAW DEPT
P.O. BOX 218
YORKTOWN HEIGHTS , NY 10598

COPY MAILED

OCT 20 2000

**OFFICE OF PETITIONS
A/C PATENTS**

In re Application of:
Marie Angelopoulos et al.
Application No. 08/478,469
Filed: June 7, 1995
Attorney Docket No. 8689A-II

DECISION ON PETITION

This is a decision on the Petition under 37 C.F.R. §1.137(b), filed June 6, 2000, to revive the above-identified application.[1]

This application became abandoned for failure to timely submit the issue fee, as required by the Notice of Allowance and Issue Fee Due, mailed December 20, 1999. The period for replying to a Notice of Allowance and Issue Fee Due is statutorily set at three (3) months.[2] No reply was received within this time period. Therefore, this application became abandoned for failure to reply as of March 21, 2000. A Notice of Abandonment was mailed on August 29, 2000.

The required issue fee of one thousand two hundred ten dollars ($1,210.00) and the required petition fee of one thousand two hundred ten dollars ($1,210.00) will be charged to Deposit Account #09-0468 as per your authorization of June 6, 2000.

Under the circumstances of the above-identified application, the requirement in 37 CFR 1.137(c) for a terminal disclaimer is hereby *sua sponte* waived. See 37 CFR 1.183.

All other requirements for the filing of a grantable petition under 37 C.F.R. §1.137(b) have been met. Therefore, this Petition is **GRANTED**.

This application is being forwarded to Technology Center 1700 for processing the CPA (filed June 6, 2000) and the Information Disclosure Statement (filed June 19, 2000).

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[1] A review of the file indicates that Petitioner re-transmitted the same petition under 37 C.F.R. §1.137(b), continued prosecution application (CPA) and preliminary amendment on August 23, 2000.

[2] 35 U.S.C. §151.

Telephone inquiries concerning this matter may be directed to Petitions Attorney Nelson B. Snyder III in the Office of Petitions at (703) 305-0011.

/Jennifer M. Hayes/

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Paper No. 43

IBM CORPORATION
INTELLECTUAL PROPERTY LAW DEPT
P.O. BOX 218
YORKTOWN HEIGHTS, NY 10598

COPY MAILED

SEP 5 2001

OFFICE OF PETITIONS

In re Application of :
Marie Angelopoulos et al. :
Application No. 08/478,469 : ON PETITION
Filed: June 7, 1995 :
Attorney Docket No. YOR919920134US4 :

This is a decision on the petition under 37 CFR 1.137(b), filed August 7, 2001, 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** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure submit the issue fee in a timely manner in reply to the Notice of Allowance mailed April 4, 2001, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on July 5, 2001.

A grantable petition under 37 CFR 1.137(b)[1] must be accompanied by: (1) the required reply,[2] 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)(III)(C) and (D). The instant petition lack(s) item(s) (4).

Since the above-identified application is a utility or plant application filed before June 8, 1995, 37 CFR 1.137(c) requires a terminal disclaimer dedicating to the public a terminal part of the term of any patent granted on the above-identified application or any patent granted on any continuing application that contains a specific reference under 35 U.S.C. 120, 121, or 365(c) to the above-identified application. The period to be disclaimed will be a terminal part of the patent to be granted equivalent to the period of abandonment. A terminal disclaimer fee of $110 is required. If the terminal disclaimer is signed by an assignee, the assignee must comply with the requirements of 37 CFR 3.73(b).

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

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By facsimile: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
Arlington, VA 22202

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[1] As amended effective December 1, 1997. See Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53194-95 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 119-20 (October 21, 1997).

[2] 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.

Telephone inquiries concerning this decision should be directed to Irvin Dingle at (703) 306-5684.

Irvin Dingle
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Paper No. 46

Daniel P. Morris
IBM Corporation
Intellectual Property Law Dept
P.O. Box 218
Yorktown Heights, NY 10598

COPY MAILED

JAN 14 2002

OFFICE OF PETITIONS

ON PETITION

In re Application of:
Marie Angelopoulos, *et al.*
Application No. 08/478,469
Filed: June 7, 1995
Attorney Docket Number: 8689A-II

This is a decision on the December 18, 2001 petition under 37 C.F.R. §1.137(b) to revive the above-identified application.

This application became abandoned for failure to timely reply to the notice of allowance and issue fee due and notice of allowability, both mailed on April 4, 2001. The period for replying is statutorily set at three (3) months.[1] No reply was received within this time period.[2] Therefore, this application became abandoned for failure to timely file a proper reply as of July 5, 2001.[3]

Petitioner first filed this petition on August 7, 2001. However, that petition was dismissed in a decision mailed on September 5, 2001 for failure to include the required terminal disclaimer. A two month deadline was set for replying.

Petitioner responded on December 18, 2001 with a terminal disclaimer.

Pursuant to Petitioner's direction, the two month extension required to make this response timely, along with the terminal disclaimer fee, will be charged to Petitioner's deposit account (da#09-0468).

All other requirements for the filing of a grantable petition under 37 C.F.R. §1.137(b) have been met. Therefore, *this petition is* ***granted***.

Telephone inquiries concerning this matter may be directed to Petitions Attorney Scott M. Ledford in the Office of Petitions at (703) 306-5593.

Scott M. Ledford
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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[1] 35 U.S.C. §151.

[2] Nor were any requests for extensions of time to respond to the Notice of Allowability received.

[3] 35 U.S.C. §133, 37 C.F.R. §1.134-136.

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)
5691208	1997-11-25	08478512	1995-06-07	022370-001200US

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

	Fee	Code
○	3 ½ year	(1551)
◉	7 ½ year	(1552)
○	11 ½ year	(1553)

Small Entity

	Fee	Code
○	3 ½ year	(2551)
○	7 ½ year	(2552)
○	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

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	/Randolph T. Apple/	Date (YYYY-MM-DD)	2007-11-21
Name	Randolph T. Apple	Registration Number	36429

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 record s.

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

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

In re Patent No. 5691208
Issue Date: November 25,1997
Application No. 08478512
Filed: June 7,1995
Attorney Docket No. A-60794-3/BI

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed November 21,2007 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 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 November 21,2007. 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 an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

Telephone inquires related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

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

FEB 0 6 2008

SIDLEY AUSTIN LLP
1501 K STREET, N.W.
WASHINGTON, DC 20005

In re Patent No. 5,843,439
Issue Date: December 1, 1998
Appl No.: 08/478967
Filed: February 1, 2008
For: Correction of Inventorship

DECISION GRANTING PETITION
37 CFR 1.324

This is a decision on the petition filed February 1, 2008 , to correct inventorship under 37 CFR 1.324.

The petition is **GRANTED**.

The patented file is being forwarded to Certificate of Corrections Branch for issuance of a certificate naming only the actual inventor or inventors.

Jean F. Vollano
Quality Assurance Specialist
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
www.uspto.gov

FEB 06 2008

DATE: February 6, 2008
TO: Certificates of Correction Branch
FROM: Jean F. Vollano
Technology Center 1600
SUBJECT: REQUEST FOR CERTIFICATE OF CORRECTION

Please issue a Certificate of Correction in U. S. Letters Patent No. 5,843,439 as specified on the attached Certificate.

Jean F. Vollano
Technology Center 1600

FEB 0 6 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE

Patent No. 5,843,539
Patented: December 1, 1998

On petition requesting issuance of a certificate for correction of inventorship pursuant to 35 U.S.C. 256, it has been found that the above identified patent, through error and without deceptive intent, improperly sets forth the inventorship. Accordingly, it is hereby certified that the correct inventorship of this patent is:

Darrell R. Anderson

Nabil Hanna

John E. Leonard

Roland A. Newman

Mitchell E. Reff

William H. Rastetter

Paul. C. Chinn

Jean F. Vollano

Jean F. Vollano
Quality Assurance Specialist
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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Paper No. 39

STERNE KESSLER GOLDSTEIN AND FOX, P.L.L.C.
1100 NEW YORK AVENUE N W
SUITE 600
WASHINGTON DC 20005-3934

COPY MAILED

DEC 0 1 2003

OFFICE OF PETITIONS

In re Application of
Drohan, MacPhee, Nunez, Liau, Burgess & Maciag
Application No. 08/479,038 :ON PETITION
Filed: June 7, 1995
Attorney Docket No. 1327.0440006
For: SUPPLEMENTED AND
UNSUPPLEMENTED TISSUE SEALANTS,
METHODS OF THEIR PRODUCTION AND USE

This is a decision on the petition under 37 CFR 1.48(a) to correct the inventorship in the above-identified application and the petition under 37 CFR 1.183, requesting waiver of 37 CFR 1.48(a)(3), which requires an executed oath or declaration by the actual inventors. Both petitions were filed on August 15, 2003.

The petition under 37 CFR 1.183 to waive 37 CFR 1.48(a)(3) is **GRANTED**.

The petition under 37 CFR 1.48(a) to correct inventorship is **GRANTED**.

An executed declaration in compliance with 37 CFR 1.63 was filed on October 5, 1995. The executed declaration listed two joint inventors -- William N. Drohan and Martin J. MacPhee.

The instant petitions were filed to correct the inventorship by adding Hernan Nunez, Gene Liau, Wilson H. Burgess, and Thomas Maciag as a joint inventors. The evidence presented shows that Attorney Eldora Ellison Floyd mailed the declaration, the claims as originally filed and any amendments filed in the USPTO to Dr. MacPhee, along with a request that Dr. MacPhee return an executed declaration. Despite several reminder letters mailed to Dr. MacPhee, Dr. MacPhee did not return an executed declaration. The Office finds that Dr. MacPhee has constructively refused to execute the supplemental declaration. Petitioners have shown (1) that this is an extraordinary situation where (2) justice requires waiver of the rule. *In re Sivertz*, 227 U.S.P.Q. 255, 256 (Comm'r Pat. 1985).

The petition under 37 CFR 1.183 to waive 37 CFR 1.48(a)(3) is **granted**.

Petitioners have also satisfied the requirements of 37 CFR 1.48(a): Petitioners requested correction of inventorship and set forth the desired inventorship change; petitioners have provided a statement from each person being added as an inventor that the error in inventorship occurred without deceptive intention on his part; petitioners successfully obtained waiver of the requirement that the actual inventors execute the declaration; the processing fee was paid; and written consent of the assignee was submitted.

BEST AVAILABLE COPY

The petition under 37 CFR 1.48 is **granted**.

Petitioners have shown that this nonprovisional application, as filed, through error and without deceptive intent, improperly set forth the inventorship, and, accordingly, this application has been corrected in compliance with 37 CFR 1.48(a). The inventorship of this application has been changed by the addition of Hernan Nunez, Gene Liau, Wilson H. Burgess, and Thomas Maciag as a joint inventors.

Please find enclosed a corrected filing receipt that reflects the inventorship change.

Pursuant to petitioners' authorization, petitioners' credit card will be charged a $130 processing fee, a $130 fee for filing a petition under 37 CFR 1.183, and a $180 fee for late submission of an Information Disclosure Statement.

After the mailing of this decision, the application will be forwarded to Technology Center 1600.

Telephone inquiries concerning this matter may be directed to the undersigned at 703 308-6712.

E. Shirene Willis

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

enclosure: corrected filing receipt

BEST AVAILABLE COPY

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)
5614547	1997-03-25	08/479,436	1995-06-07	

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

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	/Dennis A. Bennett/	Date (YYYY-MM-DD)	2009-06-03
Name	Dennis A. Bennett	Registration Number	34547

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

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

In re Patent No. 5614547
Issue Date: March 25,1997
Application No. 08479436
Filed: June 7,1995
Attorney Docket No. 054707-1218

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed June 3,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 June 3,2009 . 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

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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VAN OPHEM & VAN OPHEM, PC
REMY J. VAN OPHEM, PC
51543 VAN DYKE
SHELBY TOWNSHIP MI 48316-4447

AUG - 8 2008

In re Application of
Lee A. Chase
Application No. 08/479,658
Filed: June 7, 1995

: DECISION GRANTING PETITION

This is a decision on the PETITION TO RE-OPEN PROSECUTION OF '658 APPLICATION AND RESPONSE TO ORDER TO SHOW CAUSE; AND AFFIDAVIT OF REMY J. VAN OPHEM W/EXHIBITS A-E filed February 9, 2007, in response to an Order To Show Cause mailed December 11, 2006, requesting that prosecution of the above-identified application ('658 application) be re-opened for the purpose of examination of the claims not designated as corresponding to the count in the interference.

BACKGROUND

1. On August 12, 1997, patent Interference No. 103,836 ('836 interference) was declared between U.S. Patent No. 5,368,370 (Beam patent) and U.S. Patent Application No. 08/479,658 ('658 application). Claims 24 and 44-48 of the '658 application were designated as corresponding to the sole count of the '836 interference.
2. On August 15, 2002, the Board of Patent Appeals and Interferences (BPAI) issued a final decision in the '836 interference in favor of Chase (*i.e.*, the '658 application).
3. On September 26, 2002, McKechnie Vehicle Components USA, Inc. (McKechnie), assignee of the Beam patent, sought judicial review of the BPAI final decision under 35 U.S.C. § 146 by filing a complaint in the U.S. District Court for the Eastern District of Michigan (McKechnie Vehicle Components USA, Inc. v. Lacks Industries, Inc., Civil Action 02-73871 (E.D. Mich., filed Sept. 26, 2002)).
4. On August 15, 2003, Technology Center 3600, unaware of the above civil action, recommenced *ex parte* prosecution of the '658 application and issued a final Office action.[1]
5. On October 28, 2003, the District Court entered summary judgment against McKechnie, affirming the decision of the BPAI.
6. On November 12, 2003, McKechnie filed Plaintiff's Motion for Reconsideration and to Alter or Amend Judgment (Motion for Reconsideration) in the U.S. District Court for the Eastern District of Michigan.

[1] The final Office action treated, *inter alia*, claims 24 and 44-48.

7. On November 17, 2003, a reply under 37 C.F.R. § 1.116 to the final Office action of August 15, 2003, was received by the Office in the '658 application. Claims 24 and 44-48 were neither amended nor cancelled.
8. On December 2, 2003, a Notice of Allowability in the '658 application was mailed. Claims 24 and 44-48 were indicated allowable.
9. On December 29, 2003, the issue fee was received in the '658 application.
10. On February 24, 2004, the U.S. District Court for the Eastern District of Michigan denied McKechnie's Motion for Reconsideration.
11. On March 12, 2004, McKechnie filed a notice of appeal to the U.S. Court of Appeals for the Federal Circuit (CAFC).
12. On June 29, 2004, U.S. Patent No. 6,755,485 to Chase was granted on the '658 application.
13. On January 21, 2005, the CAFC rendered a decision on the McKechnie appeal that: (1) reversed the District Court, (2) ordered the District Court to enter summary judgment in favor of McKechnie, and (3) held U.S. Patent No. 6,755,485 to Chase a nullity and invalid.[2]
14. On April 15, 2005, the District Court entered an order holding *inter alia* that U.S. Patent No. 6,755,485 to Chase is a nullity and is invalid.
15. On November 7, 2005, Chase filed a motion in the '836 interference requesting that the '658 application be remanded to the Patent Examining Corps for further consideration of the claims that were not designated as corresponding to the count of the '836 interference (copy previously forwarded to petitioner).
16. On January 5, 2006, the BPAI rendered a decision dismissing the Chase motion of November 7, 2005, and transferring the files involved in the '836 interference to the Deputy Commissioner for Patent Examination and Policy for such action (if any) as may be appropriate (copy previously forwarded to petitioner).
17. On December 11, 2006, an Order To Show Cause was mailed requesting, by way of petition, that petitioner explain why the Office may and should re-open prosecution on the '658 application, and why petitioner is not estopped from prosecuting the '658 application for a second time.
18. In response, on February 9, 2007, the present PETITION TO RE-OPEN PROSECUTION OF '658 APPLICATION AND RESPONSE TO ORDER TO SHOW CAUSE; AND AFFIDAVIT OF REMY J. VAN OPHEM W/EXHIBITS A-E requesting that prosecution of the above-identified application ('658 application) be re-opened was filed.

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[2] *McKechnie Vehicle Components USA, Inc. v. Lacks Industries, Inc.* 122 Fed. Appx. 482 (Fed. Cir. 2005)

As petitioner states, the Court of Appeals for the Federal Circuit (CAFC) held in McKechnie Vehicle Components USA, Inc. v. Lacks Industries, Inc. (McKechnie) that the Office "did not have jurisdiction to issue the patent until this Court resolved the merits of the action, and therefore the issuance of the '485 patent had no legal effect and the '485 patent is a nullity." [3] Petitioner argues that the actions taken by the Office in resuming prosecution of the '658 application in 2003, although in response to actions by petitioner that were inconsistent with the rules of practice, were without legal effect, because the Office did not have jurisdiction to act while the '836 interference was subject to judicial review. Petitioner requests that the Office re-open prosecution of the '658 application for examination of the claims not designated as corresponding to the count in the '836 interference.

The record reveals that judicial review of the BPAI decision in the '836 interference was sought on September 26, 2002. As the Office did not have jurisdiction to examine the '658 application while the '836 interference was subject to judicial review, all actions taken by the Office after September 25, 2002, for which the Office did not have express jurisdiction to act, are a nullity. For example, the actions taken by the Office beyond ministerial functions, including the issuance of the '485 patent, were without authority and as such carry no legal effect.[4] Accordingly, the actions taken by the examiner and the correspondence issued by the Office on and after September 26, 2002, in the '658 application were "irregular and are hereby set aside."[5]

The petition to re-open prosecution of the '658 application for examination of the claims, as of their September 25, 2002 status, not designated as corresponding to the count in the '836 interference is granted.

The Office of Public Records will issue an erratum in the Official Gazette indicating that all reference to Patent No. 6,755,485 to Lee A. Chase of Michigan, for CHROMIUM-PLATED

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[3] 122 Fed. Appx. 482.

[4] Loshbough v. Allen, 359 F.2d 910, 912 (CCPA 1966) (after an applicant has appealed a Board decision to court, the USPTO may only perform certain ministerial functions such as certifying the record and transmitting it to the court); In re Grier, 342 F.2d 120, 123 (CCPA 1965) (such ministerial functions include merely correcting the record to reflect that a reversal of part of the examiner decision had occurred).

[5] Ex parte Brunner, 1872 C.D. 62 (Comm'r Pat. 1872)

COMPOSITE WHEEL issued June 29, 2004, should be deleted since the patent was issued in error.

Jurisdiction over the '658 application is being returned to Technology Center Art Unit 3617 for further examination of the application including the claims, as of their September 25, 2002 status, not designated as corresponding to the count in the '836 interference (*i.e.*, claims 24 and 44-48). Prosecution on the merits will resume on claims 1-3, 5-8, 10-15, 18-20, 26-28, 30-33, 35-39, 41-43 and 49.

Telephone inquiries related to this decision only should be directed to the undersigned at 571-272-5047.

Brian E. Hanlon

Brian E. Hanlon
Deputy Director
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

August 8, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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MICHAEL F. BORUN, ESQ.
MARSHALL, GERSTEIN & BORUN LLP
6300 SEARS TOWER
233 SOUTH WACKER DRIVE
CHICAGO IL 60606-6357

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SEP 0 9 2008

OFFICE OF PETITIONS

In re Patent No. 7,217,689
Issue Date: May 15, 2007
Application No. 08/479,892
Filed: June 6, 1995
Attorney Docket No. 01017/40178

ON PETITION

This is a decision on the petition filed February 14, 2008, which is being treated as a petition 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 **DISMISSED**.

Petitioner requests issuance of a certificate of correction in the name of "Kirin-Amgen Inc., Lucerne, Switzerland."

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 [emphasis added]. *See also* MPEP 1481.01.

U.S. Patent and Trademark Office assignment records do not disclose that an assignment to Kirin-Amgen Inc., Lucerne, Switzerland was recorded on before the date of issuance of this patent. Also, the petition does not state that the assignment was submitted for recordation as set forth in § 3.11 before issuance of the patent. Accordingly, since the assignment was not submitted for recordation before issuance of this patent, issuance of a certificate of correction would not be proper.

Furthermore, since the petition has been processed, the processing fee set forth in § 1.17(i) ($130.00) has been charged to deposit account no. 13-2855 as authorized in the petition.

Telephone inquiries concerning this decision on petition should be directed to Christopher Bottorff at (571) 272-6692.

Christopher Bottorff
Petitions Examiner
Office of Petitions

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER OF
PATENTS AND TRADEMARKS
Washington, D.C. 20231

Paper No. 28

Ronald C. Fedus
Enzo Biochem, Inc.
527 Madison Avenue, 9th Floor
New York, NY 10022

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FEB 15 2000

SPECIAL PROGRAMS OFFICE
DAC FOR PATENTS

In re Application of :
Dean Engelhardt, et al. :
Application No. 08/479,997 : ON PETITION
Filed: June 7, 1995 :
Attorney Docket No. ENZ-5 (D6) (C) :

This is a decision on the petition under 37 CFR 1.137(b), filed January 4, 2000, 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** final agency action within the meaning of 5 U.S.C. § 704.

A grantable petition under 37 CFR 1.137(b)[1] must be accompanied by: (1) the required reply,[2] 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

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[1] As amended effective December 1, 1997. See Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53194-95 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 119-20 (October 21, 1997).

[2] 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.

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)(III)(C) and (D). The instant petition lack(s) item(s) 4.

Since the above-identified application is a utility or plant application filed before June 8, 1995, 37 CFR 1.137(c) requires a terminal disclaimer dedicating to the public a terminal part of the term of any patent granted on the above-identified application or any patent granted on any continuing application that contains a specific reference under 35 U.S.C. 120, 121, or 365(c) to the above-identified application. The period to be disclaimed will be a terminal part of the patent to be granted equivalent to the period of abandonment. The period of abandonment will be computed to be the number of months from the date of abandonment to the date of filing a grantable petition. A terminal disclaimer fee of $110 is required. If the terminal disclaimer is signed by an assignee, the assignee must comply with the requirements of 37 CFR 3.73(b).

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

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By facsimile: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
Arlington, VA 22202

Telephone inquiries concerning this decision should be directed to Irvin Dingle at (703) 305-9282.

Irvin Dingle
Petitions Examiner
Office of Petitions
Office of the Deputy Assistant Commissioner
for Patent Policy and Projects

Marianne Morgan
Petitions Examiner

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER OF
PATENTS AND TRADEMARKS
Washington, D.C. 20231

Paper No. 31

RONALD C. FEDUS, ESQ.
ENZO BIOCHEM, INC.
527 MADISON AVENUE, 9TH FLOOR
NEW YORK, NEW YORK 10022

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APR 10 2000

SPECIAL PROGRAMS OFFICE
DAC FOR PATENTS

In re Application of
DEAN ENGELHARDT ET AL
Application No. 08/479,997
Filed: June 7, 1995
Attorney Docket No. ENZ-5(D6)(C2)

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed February 23, 2000, 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. 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.

The Terminal Disclaimer filed on February 23, 2000 has been accepted, and the period disclaimed is ten (10) months.

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-9282.

The application file is being forwarded to Technology Center 1600 for appropriate action on the amendment filed January 4, 2000.

Frances Hicks
Lead Petitions Examiner
Office of Petitions
Office of the Deputy Assistant Commissioner
for Patent Policy and Projects

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER OF
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Paper No. 41

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JAN 1 1 2000

SPECIAL PROGRAMS OFFICE
DAC FOR PATENTS

ENZO THERAPEUTICS, INC.
ENZO BIOCHEM, INC.
527 MADISON AVENUE, 9TH FLOOR
NEW YORK, NY 10022

In re Application of :
Brakel, et al. :
Application No. 08/479,999 : ON PETITION
Filed: June 28, 1994 :
Title: Modified Nucleotide Compounds :

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed November 19, 1999, 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 timely reply within three months to the Office action mailed January 4, 1999. Accordingly, this application became abandoned on April 5, 1999. A Notice of Abandonment was mailed on August 19, 1999.

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 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 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 requirements (3) and (4) above.

With regards to requirement (3):

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. The instant petition to revive does not contain the required statement.

With regards to requirement (4):

Since the above-identified application is a utility or plant application filed before June 8, 1995, 37 CFR 1.137(c) requires a terminal disclaimer dedicating to the public a terminal part of the term of any patent granted on the above-identified application or any patent granted on any continuing application that contains a specific reference under 35 U.S.C. 120, 121, or 365(c) to the above-identified application. The period to be disclaimed will be a terminal part of the patent to be granted equivalent to the period of abandonment. The period of abandonment will be computed to be the number of months from the date of abandonment to the date of filing a grantable petition. A terminal disclaimer fee of $55 is required. If the terminal disclaimer is signed by an assignee, the assignee must comply with the requirements of 37 CFR 3.73(b). The appropriate forms are attached for petitioner's convenience.

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER OF
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Washington, D.C. 20231

Paper No. 44

ENZO DIAGNOSTICS, INC.
C/O ENZO BIOCHEM, INC.
527 MADISON AVENUE, 9TH FLOOR
NEW YORK, NEW YORK 10022

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APR 1 0 2000

SPECIAL PROGRAMS OFFICE
DAC FOR PATENTS

In re Application of :
CHRISTINE L. BRAKEL ET AL :
Application No. 08/479,999 : ON PETITION
Filed: June 28, 1994 :
Attorney Docket No. ENZ-47(C) :

This is a decision on the renewed petition under 37 CFR 1.137(b), filed March 10, 2000, to revive the above-identified application.

The petition is **GRANTED**.

The Terminal Disclaimer filed on March 10, 2000 has been accepted, and the period disclaimed is eleven (11) months.

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-9282.

The application file is being forwarded to Technology Center 1600 for appropriate action on the reply received November 19, 1999.

Frances Hicks
Lead Petitions Examiner
Office of Petitions
Office of the Deputy Assistant Commissioner
for Patent Policy and Projects

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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Paper No. 50

ENZO BIOCHEM INC
527 MADISON AVENUE (9TH FLOOR)
NEW YORK NY 10022

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OCT 14 2003

OFFICE OF PETITIONS

In re Application of :
Brakel, et al. :
Application No. 08/479,999 : DECISION ON PETITION
Filed: June 28, 1994 :
Title: MODIFIED NUCLEOTIDE :
COMPOUNDS

This is a decision on the petition to revive the above-identified application under 37 CFR 1.137(b), filed December 26, 2001. The Office apologizes for the delay.

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 decision within the meaning of 5 USC 704.

The above-identified application became abandoned for failure to timely file a proper response to the final Office action mailed September 26, 2000, which set a shortened statutory period for reply of three months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on December 27, 2000. A Notice of Abandonment was mailed on July 16, 2001.

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).

The instant petition lacks item (1), the required reply.

With the instant petition, petitioner filed an amendment in response to the final Office action. The proposed reply to a final Office action required for consideration of a petition to revive must be either (1) a Notice of Appeal (and fee required by law); (2) an amendment that *prima facie* places the application in condition for allowance; (3) the filing of a continuing application under 37 CFR 1.53(b) or if applicable, 1.53(d); (4) a request for a continuing examination (RCE) under 37 CFR 1.114; or (5) if applicable, a 37 CFR 1.129(a) submission.

Petitioner's only submission, an amendment, has been determined by the examiner not to *prima facie* place the application in condition for allowance. Thus, petitioner has failed to submit the required reply.

In order for the application to be revived, petitioner must submit a required reply within the meaning of 37 CFR 1.137(b)(1). **Any renewed petition should be accompanied by a proper reply in the form of a Notice of Appeal, the filing of a continuation application or an RCE.** If petitioner fails to reply in the form of a Notice of Appeal, a proper continuing application, or a proper RCE, it may be construed as an intentional delay in presenting a grantable petition, which may adversely affect petitioner's ability to revive the abandoned application.

The $1,280 fee for the petition under 37 CFR 1.137(b) has been charged to Deposit Account No. 05-1135, as authorized.

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

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, Virginia

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-0272.

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
ALEXANDRIA, VA 22313-1450
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Paper No. 53

ENZO BIOCHEM INC
527 MADISON AVENUE (9TH FLOOR)
NEW YORK NY 10022

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DEC 19 2003
OFFICE OF PETITIONS

In re Application of
Brakel, et al.
Application No. 08/479,999
Filed: June 28, 1994
Title: MODIFIED NUCLEOTIDE COMPOUNDS

DECISION ON PETITION

This is a decision on the renewed petition to revive the above-identified application under 37 CFR 1.137(b), filed December 15, 2003.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to timely file a proper response to the final Office action mailed September 26, 2000, which set a shortened statutory period for reply of three months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on December 27, 2000. A Notice of Abandonment was mailed on July 16, 2001. Petitioner filed a petition to revive under 37 CFR 1.137(b) on December 26, 2001. However, this petition was dismissed in a decision mailed on October 14, 2003.

On renewed petition, petitioner has drawn the Office's attention to a Notice of Appeal that was filed on December 26, 2001. In addition, petitioner has met the other requirements for a grantable petition under 37 CFR 1.137(b).

As the fee for the Notice of Appeal was not charged upon filing of the December 26, 2001 petition, the fee at the time of filing of $320 has been charged to Deposit Account No. 05-1135, as authorized.

Please be advised that the two-month period for filing an appeal brief in triplicate (accompanied by the fee required by 37 CFR 1.17(c)) runs from the date of this decision.

The application file is being forwarded to Technology Center 1600 to await for applicant's filing of the Appeal Brief.

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-0272.

Cliff Congo
Petitions Attorney
Office of Petitions

NOTICE RE: CERTIFICATES OF CORRECTION

DATE : **Oct. 27, 2000** Paper No.: **35**

TO : Supervisor, Art Unit **2699**

SUBJECT : Certificate of Correction Request in Patent No.: **5,887,243**

A response to the following question(s) is requested with respect to the accompanying request for a certificate of correction.

☐ 1. Would the change(s) requested, under 37 C.F.R. 1.323, correcting Applicant/Attorney's (A or Atty.) errors, constitute new matter or require reexamination of the application?

☐ 2. Would the change(s) requested, under 37 C.F.R. 1.323, correcting Applicant/Attorney's (A or Atty.) errors, materially affect the scope or meaning of the claims allowed by the examiner in the patent?

☐ 3. Applicant disagrees with change(s) initialed and dated by Examiner in lieu of an Examiner's Amendment. Should the change request be granted?

☒ 4. With respect to the change(s) requested, correcting Office and/or printing (O, Off, C, and/or P) errors, should the patent read as shown in the certificate of correction?

☐ 5. If the amendment filed _____ had been considered by the Examiner, would the amendment have been entered?

PLEASE RESPOND WITHIN 7 DAYS AND RETURN THE FILE TO PALM LOCATION. 7580, CERTIFICATES OF CORRECTION BR, PARK 3 -922, Thank you!

Cecelia Newman

Lead Legal Instrument Examiner
Tel. No. 305-8228

PLEASE CHECK THE BOX(ES) BELOW CORRESPONDING TO THE BOXES CHECKED FOR QUESTION(S) ABOVE AND RETURN FILE TO: PALM LOCATION 7580, CERT. OF CORREC. BR. , PK 3 - 918

DATE:

The decision regarding the change(s) requested in the certificate of correction is shown below.

☐ 1.YES	☐ NO	☐ Comments below
☐ 2.YES	☐ NO	☐ Comments below
☐ 3.YES	☐ NO	☐ Comments below
☒ 4.YES	☐ NO	☐ Comments below
☐ 5.YES	☐ NO	☐ Comments below

☐ Comments _____

Supervisor

2699
Art Unit

PTO/SB/ 44 (10-96)
Approved for use through 6/30/99. OMB 0651-0033
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 : 5,887,243

DATED : March 23, 1999

INVENTOR(S) : Harvey, et al.

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

Please delete the following from the first column of the front page of the patent:

[*] Notice: The term of this patent shall not extend beyond the expiration date of Pat. No. 5,678,048.

MAILING ADDRESS OF SENDER:

HOWREY & SIMON
1299 Pennslyvania Ave., N.W.
Washington, DC 20004

PATENT NO. 5,887,243

No. of additional copies

Burden Hour Statement: This form is estimated to take 1.0 hour to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

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

DOUGLAS T. JOHNSON
MILLER & MARTIN
1000 VOLUNTEER BUILDING
832 GEORGIA AVENUE
CHATTANOOGA, TN 37402-2289

COPY MAILED

JUL 0 8 2004

OFFICE OF PETITIONS

In re Application of :
A. Lane Keith et al :
Application No. 08/480,411 : NOTICE
Filed: June 7, 1995 :
Attorney Docket No. 1483-100B :

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.**

Inquiries related to this communication should be directed to the Office of Petitions Staff at (703) 305-9285.

This matter is being referred to the Publishing Division.

Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov

Paper No. 36

Richard J. Warburg
Lyon and Lyon
633 West Fifth Street
Suite 4700
Los Angeles, CA 90071

COPY MAILED

APR 25 2001

OFFICE OF PETITIONS
A/C PATENTS

In re Application of
Sherrol H. McDonough et al.
Application No. 09/480,472
Filed: June 6, 1995
Attorney Docket No. N/A

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed March 9, 2001, 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 non-final Office action mailed May 16, 2000, which set a shortened statutory period for reply of three (3) months. No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on August 17, 2000.

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.

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 to the address of currently of record until such time as appropriate instructions are received to the contrary.

The file is being forwarded to Technology Center AU 1631, for further processing.

Telephone inquiries concerning this matter may be directed to Latrice Bond at (703) 308-6911.

Latrice Bond
Paralegal Specialist
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: Brobeck Phleger & Harrison
12390 El Camino Real
San Diego, CA 92130

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)
5,769,879	1998-06-23	08/480,620	1995-06-07	26538/M644

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

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	/Thomas J. Daly/	Date (YYYY-MM-DD)	2010-06-24
Name	Thomas J. Daly	Registration Number	32213

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

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

In re Patent No. 5769879
Issue Date: June 23,1998
Application No. 08480620
Filed: June 7,1995
Attorney Docket No. 26538/TJD/M4

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed June 24,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 June 24,2010 . 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)
6,253,313	2001-06-26	08/480,691	1995-06-07	

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

	Fee	Code
○	3 ½ year	(1551)
◉	7 ½ year	(1552)
○	11 ½ year	(1553)

Small Entity

	Fee	Code
○	3 ½ year	(2551)
○	7 ½ year	(2552)
○	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

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	/Eric M. Shelton/	Date (YYYY-MM-DD)	2010-05-28
Name	Eric M. Shelton	Registration Number	57630

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

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

In re Patent No. 6253313
Issue Date: June 26,2001
Application No. 08480691
Filed: June 7,1995
Attorney Docket No. 05790/002006

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed May 28,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 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 May 28,2010 . 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

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

IP Patent Docketing
K&L Gates, LLP
599 Lexington Avenue - 33rd Floor
New York, NY 10022-6030

MAILED

JUN 07 2010

OFFICE OF PETITIONS

In re Patent No. 6,253,313 :
Issue Date: June 26, 2001 :
Application No. 08/480,691 : NOTICE
Filed: June 7, 1995 :
Patentee(s): Gordon E. Morrison :

This is a Notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28, filed on May 28, 2010. This Notice is also in response to the petition under 37 CFR 1.181 filed on May 28, 2010, which is being treated as a petition under 37 CFR 1.182 to expedite the processing of the request under 37 CFR 1.28(c).

The petition/request is not signed by an attorney of record. However, in accordance with 37 CFR 1.34(a), the signature of Eric M. Shelton appearing on the petition/request 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.

The petition under 37 CFR 1.182 is **GRANTED**.

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**. Therefore, status as a small entity has been removed and any future fee paid must be submitted at the large entity rate.

A courtesy copy of this Notice is being mailed to the address given in the request. Thereafter, all future correspondence will be mailed to the address of record until otherwise instructed.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

cc: McDermott Will & Emery, LLP
600 13th Street, N.W.
Washington, DC 20005-3096

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)
5663269	1997-09-02	08480873	1995-06-07	500-2-CIP/DI

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

	Fee	Code
○	3 ½ year	(1551)
○	7 ½ year	(1552)
◉	11 ½ year	(1553)

Small Entity

	Fee	Code
○	3 ½ year	(2551)
○	7 ½ year	(2552)
○	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

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	/Kendal M. Sheets/	Date (YYYY-MM-DD)	2009-09-22
Name	Kendal M. Sheets	Registration Number	47077

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 record s.

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

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

In re Patent No. 5663269
Issue Date: September 2,1997
Application No. 08480873
Filed: June 7,1995
Attorney Docket No. 500-2-CIP/DI

:

:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)

:

This is a decision on the electronic petition, filed September 22,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 September 22,2009 . 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

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
WWW.USPTO.GOV

MAR 28 2001

022882
Martin & Ferraro
14500 Avion Parkway, Suite 300
Chantilly VA 20151-1101

Paper No. #25

In re Application of	:	DECISION ON PETITION
Gary K. Michelson	:	TO WITHDRAW
Serial No. : 08/480,908	:	HOLDING OF
Filed : June 7, 1995	:	ABANDONMENT
For : Threaded Frusto-Conical Interbody Spinal Fusion Implants	:	

This is a decision on petitioner's request filed January 25, 2001 to review the holding of abandonment mailed January 16, 2001 for failure to file a proper response to the Office Action mailed October 1, 1999. There is no fee required for this petition.

The basis for the request is that the ground for abandonment is clearly erroneous because a proper response was filed March 20, 2000. More specifically, petitioner points out that a Request for Withdrawal of Finality Under 37 C.F.R. 1.129(a) along with an amendment and a three-month extension of time was filed March 20, 2000, which communication is in the file. The examiner, rather than withdrawing the finality of the Office action mailed October 1, 1999 and considering on the merits the amendment filed March 20, 2000, issued an Advisory Action on April 24, 2000 indicating that the amendment would not be entered. The request also includes a declaration signed by Thomas H. Martin (applicant's attorney) attesting to a telephone conversation held May 17, 2000 between Mr. Martin and the examiner. During that telephone conversation, according to the declaration, examiner Brown agreed that the Advisory Action was sent in error and that based on the request for withdrawal of finality filed March 20, 2000, the finality of the October 1, 1999 action would be withdrawn and the amendment filed with the request would be considered on the merits.

A review of the file shows that the instant application is eligible for the transitional procedure of 37 C.F.R. 1.129(a). Accordingly, since the communication of March 20, 2000 was timely and included the appropriate fee, it constituted a proper response to the Office action of October 1, 1999. Clearly, the abandonment of this application was in error. The Notice of Abandonment mailed January 16, 2001 is hereby vacated and the holding of abandonment withdrawn.

Upon the mailing of this decision the application will be forwarded to the Examiner via the Legal Instruments Examiner for prompt processing and consideration of the papers filed on March 20, 2000 under 37 C.F.R. 1.129(a).

Summary: Holding of Abandonment Withdrawn.

John E. Kittle, Director
Groups 3730 and 3760
Phone: (703) 308-0873

ak/3/26/01

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 7-06-09

TO SPE OF : ART UNIT 3772

SUBJECT : Request for Certificate of Correction for Appl. No.: 08/480908 Patent No.: 753254.

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)
South Tower - 9A22
Palm Location 7580

Angela Green
Certificates of Correction Branch
703-756-1541

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: _____

_____

_____

_____

_____

Bianco. 3772

SPE **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 32

JOHN P WHITE
COOPER AND DUNHAM
1185 AVENUE OF THE AMERICAS
NEW YORK NY 10036

COPY MAILED

JUN 26 2001

OFFICE OF PETITIONS
A/C PATENTS

ON PETITION

In re Application of
israeli
Application No. 08/481,916
Filed: June 7, 1995
Attorney Docket No. 41426-1E/JPW

This is a decision on the petition filed October 23, 2000, under 37 CFR 1.183, requesting waiver of the rules where they prohibit consideration of the Information Disclosure Statement (IDS) filed October 23, 2000, which date is subsequent to the mailing of a final Office action.

The petition is dismissed. This is not a final agency action.

The IDS filed October 24, 2000 has been placed in the file, but will not be further considered by the examiner.

Petitioner requests waiver of the rules such that the examiner may consider the IDS in question.

Since the above-noted IDS has been submitted subsequent to the mailing of a final Office action on June 7, 2000, satisfaction of the requirements of 37 CFR 1.97(d)(1)-(3) is necessary for the IDS to now be considered. That is: (1) a certification in compliance with 37 CFR 1.97(e), (2) a petition requesting consideration, and (3) the $130 fee set forth in 37 CFR 1.17(I), is necessary. As the IDS of October 24, 2000 lacks the required certification, it is presumed that petitioner seeks waiver of 37 CFR 1.97(d)(1).

The regulations pertaining to the submission of an information disclosure statement (IDS) do not require that an IDS be filed, but rather, set forth the circumstances and conditions under which the Office will consider information promptly brought to its attention by applicant(s). Further, these circumstances and conditions are linked to the stage of prosecution at the time of submission of the IDS, as it is necessary for the Patent and Trademark Office (Office) to balance its need and desire to consider all

information relevant to an application with its need for an efficient operation and its capability to consider information at various stages in the prosecution of an application.

In order for grant of any petition under 37 CFR 1.183, petitioner must show (1) that this is an extraordinary situation where (2) justice requires waiver of the rule. In re Sivertz, 227 U.S.P.Q. 255, 256 (Comm'r Pat. 1985). Petitioner has not shown that either condition exists in this case. Petitioner has not set forth any explanation in support of the request for waiver, much less attempted to demonstrate that the lack of a certification was caused by "extraordinary circumstances" such that "justice requires" waiver of the requirement for certification set forth in 37 CFR 1.97(d)(1).

Moreover, petitioner concededly has a suitable remedy on hand for his predicament, that does not require the extraordinary remedy of invoking 37 CFR 1.183. It is brought to petitioner's attention that the PTO will not normally consider an extraordinary remedy, when the rules already provide an avenue for obtaining the relief sought. See Cantello v. Rasmussen, 220 USPQ 664, 664 (Comm'r Pat. 1982). As set forth in MPEP § 609, applicants wishing to have the PTO consider an IDS, where, as apparently herein, the necessary certification cannot be made, should consider the filing of a continuing application, wherein the applicants may bring the references to the attention of the examiner without having to also tender a certification. While petitioner may be concerned about the loss of term should a continuing application be necessary to get the contested reference considered, the underlying delay necessitating such an action is that of petitioner, not the PTO. Moreover, the statutes and regulations do not compel an applicant to claim benefit under 35 USC 120 of any earlier case that might shorten the term of a forthcoming patent under 35 USC 154. However, should petitioner desire to be entitled to the potential benefits of earlier application(s) via 35 USC 120, then petitioner must also accept the consequences attendant to that action. See Abbott Laboratories v. Novopharm Ltd., 38 USPQ2d 1309, 1312 (D.C. N. Il. 1996), *aff'd* 104 F.3d. 1305, 41 USPQ2d 1535 (Fed. Cir. 1997).

This file is being returned to Technology Center AU 1646.

Telephone inquiries relevant to this decision may be addressed to the undersigned at (703) 305-1820.

Brian Hearn
Senior Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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MAR - 3 2006

JOHN P. WHITE
COOPER & DUNHAM LLP
1185 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10036

In re Application of	:
Ron S. Israel et al	:
Serial No.: 08/481,916	: DECISION ON PETITION
Filed: 07 June 1995	:
Attorney Docket No.: 1769-414261/JPW	:

This letter is in response to the petition under 37 C.F.R. 1.313(a) filed 30 July 2004 requesting withdrawal of the above-identified application from issue.

BACKGROUND

On 03 June 2004 the examiner mailed to applicants a Notice of Allowability and a Notice of Allowance and Issue Fee Due. Claims 62 - 70 and 76 were indicated as allowable by the examiner in the Notice of Allowability. The issue fee was indicated as due on 03 September 2004.

On 20 July 2004 applicants filed an amendment under 37 C.F.R. 1.312 requesting entry of an amendment after the Notice of Allowance.

On 20 July 2004 applicants filed a petition under 37 C.F.R. 1.313(a) requesting that the instant application be withdrawn from issue. Along with this petition, applicants filed an Information Disclosure Statement (IDS) citing four new references that had been cited on a Japanese Office action mailed 02 March 2004.

On 30 July 2004 applicants filed a supplemental petition under 37 C.F.R. 1.313(a) requesting consideration of a second IDS containing a single reference, Chu et al., US Patent No. 4,939,240, which had been cited by the examiner in an Office action mailed 29 April 2004 in related application, 09/990,595.

DISCUSSION

The above file history has been carefully considered.

Petitioners explain that they received an untranslated copy of a Japanese patent examiner's office action mailed 05 March 2004. In this same communication the Japanese associates stated that an English translation of the Office action would be sent shortly thereafter. This communication was addressed to Mark A. Farley, an attorney with Cooper & Dunham at the time. On 17 March 2004 Mr. Farley forwarded a copy of this letter from the Japanese associates to the client and the legal representatives of a licensee and a sublicensee. On 29 March 2004, Cooper & Dunham received a copy of an English translation of the Japanese official action mailed 02 March 2004, identifying the four references used in the art rejections.

On March 30, 2004 Mr. Farley's affiliation with Cooper & Dunham ended. Another attorney, Cindy Yang, prepared a letter of 06 April 2004, to be sent by Cooper & Dunham to the client, the legal representatives of the licensee, and the sublicensee that included a copy of the English translation of the Japanese Office action and copies of the four prior art references.

On 04 June 2004, Edward Gates, an attorney representing a sublicense notified Cooper & Dunham that the four references cited by the Japanese Patent Office should be considered in terms of making them of record in the related case, SN 08/470,735.

Following a telephone conference call which Ms. Yang had with Special Programs Examiner William Dixon, Jr. and Jasemine Chambers, Director of Technology Center 1600, petitioners filed the instant Petition to Withdraw the application from Issue under 37 C.F.R. 1.313(a) and concurrently an Amendment After Notice of Allowance under 37 C.F.R. 1.312.

The established procedure provided by the PTO for submitting additional references for consideration by an examiner after allowance of an application is to file an Information Disclosure Statement under CFR 1.97 (d) (1) - (3) . A proper submission under 37 CFR 1.97(d) (1) - (3) requires that applicants submit (1) a petition requesting consideration and fee therefore; (2) a fee in accordance with §1.17(p); and (3) a certification (37 CFR 1.97(e)):

> 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 foreign application not more than three months prior to the filing of the information disclosure statement; or
>
> That no item of information contained in the information disclosure statement was cited in a communication from foreign application, and to the knowledge of the person signing the certification after making reasonable inquiry, no item of information contained in the information disclosure statement was known to any individual designated in §1.56(c) more that three months prior to the filing of the information disclosure statement.

However, any submission under 37 C.F.R. 1.97(d) or (e) was excluded because applicants could not provide either of the above required certifications.

Therefore, applicant is requesting that, instead, the instant application be withdrawn from issue under 1.313(a) so that both IDS's might be considered by the examiner.

37 CFR 1.313(a) states, in part:

> Applications may be withdrawn from issue for further action at the initiative of the Office or 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 37 CFR 1.17(h) and a showing of good and sufficient reasons why withdrawal of the application is required.

As such, a grantable petition requesting withdrawal of an application from issue must be accompanied by: (1) a showing of good an sufficient reasons why withdrawal of the application from issue is necessary; and (2) the requisite petition fee under 37 CFR 1.17(h). **The petition of $130 has been charged to petitioners' Deposit Account No. 03-3125 .**

The petition fails to set forth any good or sufficient reason as to why withdrawal of the application is necessary. The mere submission of an IDS with the petition does not make withdrawal of the application from issue necessary. There are other avenues open to applicants to have an IDS considered other than by way of petition. Applicants may request reexamination of an issued patent under 37 CFR 1.510. However, applicants are precluded from filing a Request for Continued Examination under 37 CFR 1.114 in order to have the two IDS's considered in view of the filing date of the application. A continuing application under 35 U.S.C. 111, however, could be filed.

The IDS submitted 20 July 2004 and the supplemental IDS submitted 30 July 2004 lack the required certification under CFR 1.97(e) or the good and sufficient reasons required by 1.313(a). Therefore, the only other basis for requesting withdrawal from issue would be under 37 CFR 1.183.

In order for grant of any petition under 37 CFR 1.183, petitioner must show (1) that this is an extraordinary situation where (2) justice requires waiver of the rule. In re Sivertz, 227 USPQ 255, 256 (Comm'r Pat. 1985). In other word, the only possible remedy for applicants would be waiver of a Rule for conducting business before the Office is necessary in order to preserve applicants' property rights. Petitioner has not shown that such condition exists in this case. Petitioner has not demonstrated that the lack of a certification was caused by "extraordinary circumstances" such that "justice requires" waiver of the requirement for certification set forth in 37 CFR 1.313(a).

Moreover, petitioners have a suitable remedy on hand that does not require the extraordinary remedy of invoking 37 CFR 1.183, i.e., filing of a continuation application under 35 U.S.C. 111 or a request for a re-examination subsequent to issuance of the patent. It is brought to petitioners' attention that the Office will not normally consider an extraordinary remedy, when the rules already provide an avenue for obtaining the relief sought. See Cantello v. Rasmussen, 220 USPQ 664, 665 (Comm'r Pat, 1982). As set forth in MPEP §609, applicants wishing to have the Office consider an IDS, where, as apparently herein, the necessary certification cannot be made, should consider filing of a continuing application, wherein the applicants may bring the

references to the attention of the examiner without having to also tender a certification. While the petitioner may be concerned about the loss of term should a continuing application be necessary to have the proffered references considered, the underlying delay necessitating such an action is that of the petitioner, not the Office. Moreover, the statutes and regulations do not compel an applicant to claim benefit under 35 U.S.C. 120 of any earlier case that might shorten the term of a forthcoming patent under 35 U.S.C. 154. However, should petitioner desire to be entitled to the potential benefits of earlier application(s) via 35 U.S.C. 120, then petitioner must also accept the consequences attendant to that action. See Abbott Laboratories v. Novopharm Ltd., 38 USPQ2d 1309, 1312 (D.C.N. II, 1996), aff'd 104 F.3d. 1305, 41 USPQ2d 1535 (Fed. Cir. 1997).

DECISION

For all of the above reasons, the petition under 37 CFR 1.313(a) requesting withdrawal of the application from issue is **DENIED**.

The five references submitted in the two Information Disclosure Statements will be placed in the file but will not be considered as provided for in 37 CFR. 1.97(i).

Any request for reconsideration of this decision must be filed within two (2) months of the mailing date of this decision in order to be considered timely.

Should there by any questions regarding this decision, please contact Special Program Examiner, William R. Dixon, Jr. by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0519 or by facsimile sent to the general Office facsimile number, 571-273-8300.

George C. Elliott
Director, Technology Center 1600

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OFFICE OF PETITIONS

COOPER & DUNHAM LLP
1185 AVENUE OF THE AMERICAS
NEW YORK NY 10036

In re Application of :
Israeli et al. :
Application No. 08/481,916 : DECISION ON PETITION
Filed: June 7, 1995 :
Attorney Docket No. 41426-1E/JFW/SJA :

This is a decision on the petition filed May 8, 2006, requesting (1) reconsideration of the dismissal mailed May 3, 2006, of the previous petition under 37 CFR 1.313(a) filed July 30, 2004, to withdraw the above-identified application from issue, which is properly treated as a petition under 37 CFR 1.313(c), or in the alternative, (2) under 37 CFR 1.183, waiver of the rules with the same result.

The petition considered under 37 CFR 1.313(a), or 1.313(c), is **DISMISSED.**

The petition considered under 37 CFR 1.183 is **DISMISSED.**

The Technology Center Group Director dismissed the requested withdrawal in the decision of March 3, 2006. The decision correctly noted that petitioner's lack of supplying the statement required by 37 CFR 1.97(e)(1) or (e)(2) such the examiner lacked any authority to consider the IDS was not good and sufficient reasons for withdrawal and that petitioner had not supplied any other adequate basis for withdrawal.

Petitioner again asserts that withdrawal of this application from issue is warranted such that the IDS filed July 20, 2004, and the IDS filed July 30, 2004, may be considered by the examiner. In the alternative, waiver of the rules is requested. Both petitions are properly before the Office of Petitions.[1]

As to the petition considered under 37 CFR 1.313(a):

Inspection of USPTO records reveals that applicant paid the issue fee on September 8, 2004. Accordingly, 37 CFR 1.313(a) no longer applies to this application, as the regulation only speaks to petitions for withdrawal filed *prior* to payment of the issue fee. The petition filed July 20, 2004 as it was filed prior to payment of the issue fee, was properly considered by the Group Director under the terms of 37 CFR 1.313(a). As such, the petition filed May 8, 2006, considered under 37 CFR 1.313(a), must be dismissed as immaterial. Note further that MPEP § 1308 gives as an example a reason that does not warrant withdrawing an application from issue after payment of the issue fee at the initiative of the Office: to permit the examiner to consider an information disclosure statement. Once the issue fee is paid, an applicant's request for withdrawal is permitted only for the reasons stated in 37 CFR 1.313(c), and petitioner has failed to meet any of the requirements of 37 CFR 1.313(c) for withdrawal after payment of the issue fee. See MPEP 1308.

With respect to the petition considered under 37 CFR 1.183:

The regulations pertaining to the submission of an information disclosure statement (IDS) do not

[1] As explained in MPEP 1002.02(b), ¶¶ 2, 33, only the Office of Petitions has the delegated authority to decide a petition under 37 CFR 1.313(c) or § 1.183.

require that an IDS be filed, but rather, set forth the circumstances and conditions under which the Office will consider information promptly brought to its attention by applicant(s). Further, these circumstances and conditions are linked to the stage of prosecution at the time of submission of the IDS, as it is necessary for the Patent and Trademark Office (Office) to balance its need and desire to consider all information relevant to an application with its need for an efficient operation and its capability to consider information at various stages in the prosecution of an application. The *quid pro quo* for USPTO consideration of an IDS after close of prosecution is, however, that applicant diligently present the information to the USPTO, a circumstance that did not happen here.

Here, it is due to the delay of applicants and their former registered practitioner, that the requisite statement under 37 CFR 1.97(e) cannot be made. It is thus clear that petitioner is attempting in the guise of a petition filed under 37 CFR 1.313(a), or wavier of the requirements of 37 CFR 1.131(a), to circumvent the requirements of 37 CFR 1.97(d).

In order for grant of any petition under 37 CFR 1.183, petitioner must show (1) that this is an extraordinary situation where (2) justice requires waiver of the rule. In re Sivertz, 227 U.S.P.Q. 255, 256 (Comm'r Pat. 1985). Petitioner has not shown that either condition exists in this case.

Petitioner asserts that the information in question, while such was first made known to petitioner upon the March 5, 2004 Office action from the Japanese Patent Office, went through several levesl of consideration and review by domestic and foreign counsel and a licensee *vis a vis* its relevance to the instant application. However, the time for making the assertion required by 37 CFR 1.97(d) that would permit consideration of the information expired June 5, 2004.

While petitioner's candor is appreciated, nevertheless, the circumstances of this case do not demonstrate an extraordinary situation, much less one where justice requires waiver of the rules. Since this application had received a final rejection in April 23, 2003, which is long before applicant first became aware of the information--regardless of its relevance to this application--a certification has been continuously required since that time as a condition of having an IDS considered. See 37 CFR 1.97(d). The Notice of Allowance on June 3, 2004, did not alter or change the requirement for an assertion, or reset the three month period in which the IDS must be filed at the USPTO in order for it to be considered by the examiner. That is, petitioner, at the time he first became aware of the information, could have made the certification, and submitted the information, certification, petition, and fee to the Office, and as such, the information would have been considered by the Office.[2] Petitioner's, and petitioner's counsel's undue delay in taking appropriate action with respect to this application is not seen to warrant equitable tolling of the period set forth in 37 CFR 1.97(e). See, Vincent v. Mossinghoff, 230 USPQ 621, 625 (D.D.C. 1985).

It is well settled that a party's inadvertent failure to comply with the requirements of the rules or procedures before the USPTO is not deemed to be an extraordinary situation that would warrant waiver of the rules or procedures under 37 CFR 1.183. See Honigsbaum v. Lehman, 903 F. Supp. 8, 37 USPQ2d 1799 (D.D.C. 1995) (Commissioner did not abuse his discretion in refusing to waive requirements of 37 CFR 1.10(c) in order to grant filing date to patent application, where applicant failed to produce "Express Mail" customer receipt or any other evidence that application was actually deposited with USPS as "Express Mail"), *aff'd without opinion*, 95 F.3d 1166 (Fed. Cir.1996); Nitto Chemical Industry. Co., Ltd. v. Comer, 39 USPQ2d 1778, 1782 (D.D.C. 1994) (Commissioner's refusal to waive requirements of 37 CFR 1.10 in order to grant

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[2] The preliminary "Notice of Proposed Rulemaking, Duty of Disclosure" 56 *Fed. Reg.* 37321 (Aug. 6, 1991) at 37326 emphasized that the time that the information was known to any individual designated in 37 CFR 1.55(c) is the time when the information was first discovered, even if applicant's awareness of the materiality came later. This encourages prompt evaluation of the relevance of information and to have a date certain for determining if a certification under 37 CFR 1.97(e) can be properly made. Likewise the 3 month period for submission of the IDS after discovery of the information is familiar to users of the patent system and based on the normal shortened statutory period for reply to an Office action See "Notice of Final Rulemaking, Duty of Disclosure", 57 *Fed. Reg.* 2021, 2027-2028 (January 17, 1992).

priority filing date to patent application not arbitrary and capricious, because failure to comply with the requirements of 37 CFR 1.10 is an "avoidable" oversight that could have been prevented by the exercise of ordinary care or diligence, and thus not an extraordinary situation under 37 CFR 1.183); Gustafson v. Strange, 227 USPQ 174 (Comm'r Pats. 1985) (Counsel's unawareness of 37 CFR 1.8 not extraordinary situation warranting waiver of a rule). Rather, as the USPTO did not cause or contribute to the delay in consideration of the information, this is not an "extraordinary situation" where "justice requires" an extraordinary remedy. See Helfgott & Karras, P.C. v. Dickinson, 209 F.3d 1328, 54 USPQ2d 1425 (Fed. Cir. 2000).

Moreover, petitioner concededly has a suitable remedy on hand for his predicament, that does not require the extraordinary remedy of invoking 37 CFR 1.183. It is brought to petitioner's attention that the PTO will not normally consider an extraordinary remedy, when the rules already provide an avenue for obtaining the relief sought. See Cantello v. Rasmussen, 220 USPQ 664, 664 (Comm'r Pat. 1982). As set forth in MPEP § 609, applicants wishing to have the PTO consider an IDS, where, as apparently herein, the necessary certification cannot be made, should consider the filing of a continuing application under 37 CFR 1.53(b), wherein the applicants may bring the references to the attention of the examiner without having to also tender a certification. Since, as petitioner acknowledges he can file a continuing application, then petitioner is not unduly prejudiced by this decision. As to the term of any forthcoming continuing application, it is noted that the patent statute and regulations do not compel an applicant to claim benefit under 35 U.S.C. § 120 of any earlier application that might shorten the term of any forthcoming patent under 35 U.S.C. § 154. However, should petitioner claim the potential benefits of an earlier application(s) via 35 U.S.C.. § 120 in a forthcoming continuing application, then petitioner must also accept the consequences attendant to that action. See Abbott Laboratories v. Novopharm Ltd., 38 USPQ2d 1309, 1312 (D.C. N. Il. 1996), aff'd 104 F.3d. 1305, 41 USPQ2d 1535 (Fed. Cir. 1997). Indeed, the possible loss of term if a continuing application is filed, should have been the impetus for the diligent filing of the IDS in question. While petitioner may be concerned about the loss of term should a continuing application be necessary to get the contested references considered, the underlying delay necessitating such an action is that of petitioner, not the USPTO. Petitioner may also seek relief under the provisions of 35 U.S.C. § 251 or § 302 and their promulgating regluations.

This application is being referenced to the Office of Publications for issuance as a patent.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3217.

Brian Hearn
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)
5706605	1998-01-13	08482351	1995-06-07	8401.435

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

	Fee	Code
○	3 ½ year	(1551)
○	7 ½ year	(1552)
◉	11 ½ year	(1553)

Small Entity

	Fee	Code
○	3 ½ year	(2551)
○	7 ½ year	(2552)
○	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

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	/klhester/	Date (YYYY-MM-DD)	2010-01-21
Name	Kathryn L. Hester, Ph.D.	Registration Number	46768

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

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

In re Patent No. 5706605
Issue Date: January 13,1998
Application No. 08482351
Filed: June 7,1995
Attorney Docket No. 8401.435

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed January 21,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 January 21,2010 . 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

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY
AND DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
WWW.USPTO.GOV

DEC - 2 2002

DONALD E. STOUT
STOUT UXA BUYEN & MULLINS
4 VENTURE, SUITE 300
IRVINE CA 92618

In re Application of	:
Basil Rapoport	:
Serial No.: 08/482,402	: PETITION DECISION
Filed: June 7, 1995	:
Attorney Docket No.: 102105.151	:

This is in response to applicant's petition under 37 CFR 1.181, filed October 1, 2002, to withdraw the abandonment of the above identified application based on timely filing of a reply.

A review of the file history shows that the examiner mailed a Notice of Allowance and Issue Fee Due to applicant on May 1, 2002, setting a three month statutory period for payment of the Issue Fee. Applicant submitted payment of the Issue Fee on July 18, 2002 (Certificate of Mailing date) which was received on July 24, 2002. The Issue Fee Transmittal Form directed the Office to charge the Issue Fee to Deposit Account No. 13-5135. As noted in the attachment to this decision the Office was unable to charge the Issue fee due to insufficient funds in the Deposit Account on that date (approximately July 24, 2002). Applicant was, or should have been, notified of the deficiency, however notification would likely have occurred after the final due date for payment of the Issue Fee. The application was held abandoned by Notice of Abandonment mailed September 16, 2002, for failure to pay the Issue Fee. Applicant resubmitted the Issue Fee on October 1, 2002, however this was after the due date for payment thereof.

Applicants' petition is **DENIED**. Applicant should promptly submit a renewed petition under 37 CFR 1.137(b) which would allow revival of this application.

Should there be any questions with respect to this decision, please contact William R. Dixon, Jr., by mail addressed to: Director, Technology Center 1600, Washington, D.C. 20231, or by telephone at (703)308-3824 or by facsimile transmission at (703) 308-7230.

Jasemine C. Chambers
Director, Technology Center 1600

RECEIVED
DEC 09 2002

(4) 60/482,402

NOTICE OF FEE DUE

DATE: 7/25/02

TO: _____

FROM: Office of Initial Patent Examination

SUBJECT: Fee Due

APPLICATION NUMBER: 08484402

A fee is due for the attached document submitted to the U. S. Patent and Trademark Office for the following reason. Please check the application for the appropriate authorization to charge a deposit account. If an authorization is present, please charge the appropriate fee. If an authorization is not present, notify the applicant of the fee deficiency.

☐ Insufficient fee by check

☒ Insufficient funds in deposit account

☐ Declined credit card

☐ Non authorization for charge to deposit account

☐ No fee submitted per requirement

The correct fee code: 142	amount	$ 1280
The suspended fee code: 197	amount	- $ —
Fee Due	amount	=$ 1280

If you have any questions, please contact Cynthia Streater at 703-306-5430 or Eleanor Kurtz at 703-308-3642.

Terminal Operator TGeolamis

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 80

STOUT, UXA BUYAN & MULLINS LLP
4 VENTURE, SUITE 300
IRVINE CA 92618

RECEIVED
JUL 11 2003
OFFICE OF PETITIONS

COPY MAILED
JUL 08 2003

In re Application of
Rapoport
Application No. 08/482,402
Filed: June 7, 1995 (Last CPA filed June 13, 2000)
Attorney Docket No. 102105.151CI

: ON PETITION
:
: A-1697

This is a decision on the petition under 37 CFR 1.183, filed June 13, 2003, requesting waiver of the rules and revival of the instant application.[1]

The petition is **DISMISSED**.

Facts:

A Notice of Allowance and Issue Fee Due was mailed to applicant on May 1, 2002. The Notice set a three month statutory period for payment of the Issue Fee. Therefore, the issue fee was due on or before August 1, 2002.

Petitioner submitted payment of the Issue Fee on July 18, 2002 (Certificate of Mailing Date) which was received on July 24, 2002. The Issue Fee Transmittal Form directed the Office to charge the Issue Fee to Deposit Account No. 13-5135.

On July 25, 2002, the Office attempted to charge the issue fee to the deposit account. However, the Office was unable to charge the issue fee of $1,280 due to insufficient funds in the deposit account. On July 25, 2002, the deposit account contained less than $700.

37 CFR 1.25(a) states,

> For the convenience of attorneys, and the general public in paying any fees due, in ordering services offered by the Office, copies of records, etc., deposit accounts may be established. . . . An amount sufficient to cover all fees, services, copies, etc., requested must always be on deposit. Charges to accounts with insufficient funds will not be accepted.

The charge to the deposit account, which had insufficient funds, was not accepted.

On July 31, 2002, $5000 was deposited into the deposit account.

Petitioner did not take steps to inform the Office that the funds in the account had been replenished and the Office did not attempt to recharge the deposit account.

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[1] The petition under 37 CFR 1.181 will be forwarded to the Technology Center for consideration of the merits of the petition.

The application became abandoned on August 2, 2002, due to petitioner's failure to timely pay the issue fee.

On September 16, 2002, the Office mailed a Notice of Abandonment, which stated the application had become abandoned because the issue fee had not been received by the Office.

Petitioner assumed the issue fee transmittal form had not been received by the Office. On October 1, 2002, petitioner filed a petition to withdraw the holding of abandonment alleging the issue fee transmittal form had been timely filed.

With the petition, petitioner submitted a page entitled "Transmittal of Payment of Issue Fee." The page instructed the Office to charge $1,280 for the issue fee to petitioner's deposit account. Upon receipt of the petition and attachments, the Office charged $1,280 to petitioner's deposit account and forwarded the file to the Technology Center for consideration of the merits of the petition. The individual who charged the $1,280 did not consider the merits of the petition and did not determine whether the application was abandoned or not abandoned. Instead, the individual simply followed the financial instructions made by petitioner and then forwarded the petition to the Technology Center for consideration of the merits of the petition.

The individual who charged the fee gave the fee a "mailroom date" in computer records of October 1, 2002.[2] Therefore, the individual determined the date of payment of the issue fee to be October 1, 2002, two months after expiration of the application.[3] The fee was clearly charged in response to the deposit account authorization mailed on October 1, 2002, and not the deposit account authorization mailed on July 18, 2002. Even if the individual had the right to determine the issue fee was paid within three months of the notice of allowance, the individual did not in so far as the individual assigned a mail date of October 1, 2002, to the issue fee. Unless the issue fee is paid within three months of a notice of allowance, the application goes statutorily abandoned and can only be revived under 37 CFR 1.137.

The file and petition were physically received in the Technology Center on October 9, 2002.

On December 2, 2002, the Office mailed a decision dismissing the petition. The decision informed petitioner that the Office had received the issue fee transmittal form but the Office was unable to charge the issue fee due to insufficient funds in the deposit account. The decision suggested petitioner file a petition under 37 CFR 1.137(b).[4]

On December 27, 2002, petitioner filed a request for reconsideration of the December 2, 2002 decision and in the alternative, filed a petition under 37 CFR 1.137(a) and 37 CFR 1.137(b). The

---

[2] The accounting date for the payment is October 3, 2002.

[3] 35 U.S.C. 151 states:
If 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. The notice shall specify a sum, constituting the issue fee or a portion thereof, which shall be paid within three months thereafter. Upon payment of this sum the patent shall issue, but if payment is not timely made, the application shall be regarded as abandoned.

[4] A grantable petition under 37 CFR 1.137(b) must be accompanied by the required reply (the issue fee), the petition fee (which was $1.280 on December 2, 2002), 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. Since the issue fee had been charged to petitioner's deposit account on October 3, 2002, a petition under 37 CFR 1.137(b) would have only required payment of the issue fee and the statement.

petition noted the deposit of additional funds on July 31, 2002, and stated,

> [T]he application was improperly abandoned because sufficient funds were present in the deposit account prior to the deadline for payment of the issue fee, and the PTO reasonably should have attempted to re-charge the issue fee on the deadline, rather than merely hold the application abandoned.

An additional petition was filed January 14, 2003. The petition requested the "paper filed on December 27 be superseded by the present filing." Petitioner argued the application could not be abandoned because the issue fee was charged to petitioner's deposit account on October 3, 2002.

A decision was mailed on May 7, 2003, dismissing the petition for reconsideration under 37 CFR 1.181 and dismissing the petition under 37 CFR 1.137(a). The merits of the alternative petition under 37 CFR 1.137(b) were not considered. The decision failed to take into consideration the January 14, 2003 petition because the petition had not been matched with the file as of May 7, 2003.

The instant petition requests consideration of the merits of the January 14, 2003 petition and provides further arguments alleging the application is not abandoned. In addition, the instant petition requests waiver of the rules under 37 CFR 1.183.

Analysis:

The petition under 37 CFR 1.181 to withdraw the holding of abandonment:

The record indicates that the May 7, 2003 decision did not take into consideration the merits of the petition filed on January 14, 2003. For example, the Office did not consider petitioner's arguments that the holding of abandonment was withdrawn automatically when the Office charged the issue fee to petitioner's deposit account. Therefore, the file will be forwarded to the Technology Center to consider the petition filed on January 14, 2003, and the instant petition, to the extent the petitions request withdrawal of the holding of abandonment.

The petition under 37 CFR 1.183:

A standard principle of statutory construction is: *expressio unius est exclusion alterius* (the mention of one thing implies exclusion of another thing), namely absent legislative intent to the contrary, when a statute expressly provides a specific remedy for a specific situation, the statute is deemed to exclude other remedies for such situation.[5] Since Congress has provided a specific scheme for the revival of abandoned applications (*i.e.*, the specific situations under which the PTO may revive an abandoned application and the specific requirements (fee amounts and standards) applicable to each specific situation), the creation of other schemes (*e.g.*, 37 CFR 1.182 or 1.183) for the revival of any abandoned application would be inconsistent with the patent statute. Thus, the Commissioner's authority to revive an abandoned application is limited to that specified in the statutory scheme set forth in 35 U.S.C. §§ 41(a)(7), 111, 133, and 151.[6]

---

[5] See National R.R. Passenger Corp. v. National Ass'n Of R.R. Passengers, 414 U.S. 453, 458 (1974); see also Botany Worsted Mills v. United States, 278 U.S. 282, 289 (1929) ("when a statute limits a thing to be done in a particular mode, it includes the negative of any other mode").

[6] See Morganroth v. Quigg, 885 F.2d 843, 847, 12 USPQ2d 1125, 1128 (Fed. Cir. 1989)(the Commissioner lacks the authority to revive an application abandoned by termination of court proceedings because 35 U.S.C. §§ 41(a)(7), 133, or 151 do not provide for the revival of an application abandoned in such a manner).

That is, it would be an inappropriate exercise of 37 CFR 1.182 or 1.183 to, in essence, revive this abandoned application. Rather, the appropriate remedy is revival of this abandoned application by way of acceptance of the belated issue fee under 35 USC 151 and 37 CFR 1.137.

In addition to the above, it is brought to petitioner's attention that "justice" does not require an extraordinary remedy, when the rules already provide an avenue for obtaining the relief sought. In this case, petition may seek revival under 37 CFR 1.137.

Petitioner may wish to strongly consider filing a petition under 37 CFR 1.137(b).

Petitioner may wish to note that delay in the filing of a grantable petition, such as a petition under 37 CFR 1.137(b), may result in a smaller patent term for the patent which issues from the instant application. In general, the term of a patent is 20 years from the effective filing date. Therefore, a delay in filing a grantable petition will lengthen the time a patent takes to issue and thereby may shorten the patent term which will be obtained by the applicant.

A short form which may completed in order to seek revival under 37 CFR 1.137(b) is attached. Petitioner may wish to complete the form and submit it, along with $1,300, in order to revive the application. Upon revival, the application will be forwarded to the Office of Publications for issuance into a patent.

Petitioner may wish to file a supplemental Issue Fee Transmittal Form. The instant form has the name of the state of Delaware misspelled.

The petition fee of $130 paid on October 1, 2003, will be applied to the fee for the instant petition.

The file is now being forwarded to Technology Center 1600 for the consideration of the petition filed on January 14, 2003, and the instant petition, to the extent the petitions request withdrawal of the holding of abandonment.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at ~~(703) 306-5683~~ new 571-272-3203.

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

Attached: PTO/SB/64

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

Paper No. 83

STOUT, UXA, BUYAN & MULLINS LLP
4 VENTURE, SUITE 300
IRVINE, CA 92618

DEC 20 2004

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DEC 17 2004

OFFICE OF PETITIONS

ON PETITION

In re Application of
Rapoport
Application No. 08/482,402
Filed: June 7, 1995 (Last CPA filed June 13, 2000)
Attorney Docket No. 102105.151CI

4-1697 dw3

This is a decision on the petition under 37 CFR 1.137(b) filed September 4, 2003, and supplemented December 3, 2004.

12/20/04

The petition is **granted**.

Facts and Procedural History:

A Notice of Allowance and Issue Fee Due was mailed to applicant on May 1, 2002. The Notice set a three month statutory period for payment of the Issue Fee. Therefore, the issue fee was due on or before August 1, 2002.

The application became abandoned on August 2, 2002, due to petitioner's failure to timely pay the issue fee.

On September 16, 2002, the Office mailed a Notice of Abandonment, which stated the application had become abandoned because the issue fee had not been received by the Office.

On October 1, 2002, petitioner filed a petition to withdraw the holding of abandonment alleging the issue fee transmittal form had been timely filed.

The file and petition were physically received in the Technology Center on October 9, 2002.

On December 2, 2002, the Technology Center mailed a decision dismissing the petition. The decision informed petitioner that the Office had received the issue fee transmittal form but the Office was unable to charge the issue fee due to insufficient funds in the deposit account. The decision suggested petitioner file a petition under 37 CFR 1.137(b).

On December 27, 2002, petitioner filed a request for reconsideration of the December 2, 2002 decision and in the alternative, filed a petition under 37 CFR 1.137(a) and 37 CFR 1.137(b).

An additional petition was filed January 14, 2003. The petition requested the "paper filed on December 27 be superseded by the present filing." Petitioner argued the application could not be abandoned because the issue fee was charged to petitioner's deposit account on October 3, 2002. A decision was mailed on May 7, 2003, dismissing the petition for reconsideration under 37 CFR 1.181 and dismissing the petition under 37 CFR 1.137(a). The merits of the alternative petition under 37 CFR 1.137(b) were not considered. *The decision failed to take into consideration the January 14, 2003 petition because the petition had not been matched with the file as of May 7, 2003.*

A petition was filed on June 13, 2003, requesting consideration of the merits of the January 14, 2003 petition. The petition provided further arguments alleging the application is not abandoned. In addition, the petitioned requested waiver of the rules under 37 CFR 1.183.

The petition under 37 CFR 1.183 was dismissed on July 8, 2003. The file was forwarded to the Technology Center for consideration of the petition to withdraw the holding of abandonment. The decision stated,

> The record indicates that the May 7, 2003 decision did not take into consideration the merits of the petition filed on January 14, 2003. For example, the Office did not consider petitioner's arguments that the holding of abandonment was withdrawn automatically when the Office charged the issue fee to petitioner's deposit account. Therefore, the file will be forwarded to the Technology Center to consider the petition filed on January 14, 2003, and the instant petition, to the extent the petitions request withdrawal of the holding of abandonment. . . .
>
> The file is now being forwarded to Technology Center 1600 for the consideration of the petition filed on January 14, 2003, and the instant petition, to the extent the petitions request withdrawal of the holding of abandonment.

The instant petition under 37 CFR 1.137(b) was filed on September 4, 2003. The instant petition does not explicitly request the Office not consider the previous requests to withdraw the holding of abandonment. Therefore, the Technology Center should have considered the request to withdraw the holding of abandonment, and if such a request was dismissed, forwarded the file to the Office of Petitions to consider the petition under 37 CFR 1.137(b).

The Technology Center received the file but did not consider petitioner's arguments that the holding of abandonment should be withdrawn. The Technology Center did not consider the merits of the instant petition or send the file to the Office of Petitions for consideration of the merits of the petition. Petitioner filed a status inquiry on December 15, 2003. The Office did not respond to the status inquiry. During January of 2004, the Technology Center sent the file to Files Repository to be stored as an abandoned file.

On May 26, 2004, a second status inquiry was filed by petitioner. The file was ordered from Files Repository and sent to the Technology Center during June of 2004.

On December 3, 2004, petitioner filed a "Re-Transmittal of Previously Transmitted Petition for Revival of Application for Patent" which included a copy of the papers filed September 4, 2004. In response, the Office of Petitions ordered the file and the file was received from the Technology Center on December 10, 2004.

Analysis:

Per a telephone conversation with attorney Donald Stout on December 18, 2004, the Office understands petitioner wishes for the Office to disregard previous requests to withdraw the holding of abandonment and to consider only the instant petition under 37 CFR 1.137(b).

A grantable petition under 37 CFR 1.137(b) must be accompanied by:
(1) the required reply,
(2) the petition fee,
(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) a terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

As to (1), the required reply is the submission of the issue fee. The issue fee of $1,280 was submitted during October of 2002. Therefore, requirement (1) has been met.

As to (2), the petition fee of $1,300 will be charged to petitioner's deposit account per the fee authorization filed on September 4, 2003.

As to (3), the proper statement has been submitted.

As to (4), a Terminal Disclaimer is **not** required. A terminal disclaimer is required when an application was filed prior to June 8, 1995. A Continuation Prosecution Application (CPA) was filed June 13, 2000. Although the CPA uses the same application number as an application which was filed prior to June 8, 1994, the CPA is a new and separate application. Therefore, the Terminal Disclaimer has not been accepted and will not be entered, but will be placed in the application file. The fee for filing a Terminal Disclaimer will not be charged to petitioner's deposit account.

Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b). Therefore, the petition is granted and the application is revived.

The file is now being forwarded to Publishing Division for processing into a patent.

Telephone inquiries may be directed to Petitions Attorney Steven Brantley at (571) 272-3203.

Charles Steven Brantley
Petitions Attorney
Office of Petitions

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

MAY - 7 2003

DONALD E. STOUT
STOUT UXA BUYEN & MULLINS
4 VENTURE, SUITE 300
IRVINE CA 92618

In re Application of	:
Basil Rapoport	:
Serial No.: 08/482,402	: PETITION DECISION
Filed: June 7, 1995	:
Attorney Docket No.: 102105.151	:

This is in response to applicant's renewed petition under 37 CFR 1.181, filed December 27, 2002, to withdraw the abandonment of the above identified application based on timely filing of a reply.

A review of the file history, as previously set forth, shows that the examiner mailed a Notice of Allowance and Issue Fee Due to applicant on May 1, 2002, setting a three month statutory period for payment of the Issue Fee. Applicant submitted payment of the Issue Fee on July 18, 2002 (Certificate of Mailing date) which was received on July 24, 2002. The Issue Fee Transmittal Form directed the Office to charge the Issue Fee to Deposit Account No. 13-5135. As noted in the attachment to this decision the Office was unable to charge the Issue fee due to insufficient funds in the Deposit Account on that date (approximately July 24, 2002). Applicant was not notified of the insufficiency. That applicant had sufficient funds in the Deposit Account at a later date, prior to the final due date for payment of the Issue Fee, is not germane to whether the Issue Fee was, or could have been, charged to the Deposit Account. The relevant date is the date the fee was attempted to be charged. The application was therefor held abandoned by Notice of Abandonment mailed September 16, 2002, for failure to pay the Issue Fee. Applicant resubmitted the Issue Fee on October 1, 2002, however this was after the due date for payment thereof.

37 CFR 1.25 states:

(a) For the convenience of attorneys, and the general public in paying any fees due, in ordering services offered by the Office, copies of records, etc., deposit accounts may be established in the Patent and Trademark Office upon payment of the fee for establishing a deposit account § 1.21(b)(1)). A minimum deposit of $1,000 is required for paying any fee due or in ordering any services offered by the Office. However, a minimum deposit of $300 may be paid to establish a restricted subscription deposit account used exclusively for subscription order of patent copies as issued. At the end of each month, a deposit account statement will be rendered. A remittance must be made promptly upon receipt of the statement to cover the value of items or services charged to the account and thus restore the account to its established normal deposit value. **An amount sufficient to cover all fees, services, copies, etc., requested must always be on deposit. Charges to accounts with insufficient funds will not be accepted.**

As noted in the highlighted section it is applicants' responsibility to ensure adequate funds are on deposit for all charges made or requested. Failure to do so will cause the requested charge to not be accepted. Failure of the Office to notify applicants of insufficient funds in an account or to attempt later to charge a fee to an account places an unnecessary burden on the Office and is not done.

Applicants' renewed petition is **DENIED**.

Applicants request that this also be considered a petition under 37 CFR 1.137(a) is dismissed as insufficient evidence or explanation are provided to establish unavoidable abandonment. Applicant is again advised to promptly submit a petition under 37 CFR 1.137(b) which would allow revival of this application.

Should there be any questions with respect to this decision, please contact William R. Dixon, Jr., by mail addressed to: Director, Technology Center 1600, Washington, D.C. 20231, or by telephone at (703)308-3824 or by facsimile transmission at (703) 308-7230.

Jasemine C. Chambers

Jasemine C. Chambers
Director, Technology Center 1600

OCT 0 1 2002
PATENT & TRADEMARK OFFICE

RECEIVED
OCT 0 8 2002
TECH CENTER 1600/2900

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application: / Rapoport / allowed: 05/01/2002 / batch: 2315

U.S. Serial No. 08/482,402 /

CPA Filed: 06/07/95 / Group Art Unit 1642 / Examiner: S. Ungar

For: **DISEASE ASSOCIATED HUMAN AUTOANTIBODIES SPECIFIC FOR HUMAN THYROID PEROXIDASE** /

Commissioner for Patents
Washington, D.C. 20231

PETITION FOR REINSTATEMENT OF IMPROPERLY ABANDONED APPLICATION

Dear Sir:

This petition is responsive to a *Notice of Abandonment* of the above-identified application, mailed on September 16, 2002, and received in our offices on September 20, 2002. A copy of the *Notice* is enclosed for convenience.

The *Notice* indicates that the application was abandoned for applicant's failure to timely pay the required issue fee within the statutory period of three months from the mailing date of the Notice of Allowance dated May 1, 2002; therefore, due August 1, 2002.

However, an authorization for payment of the issue fee by PTO Deposit account No. 13-5135 was mailed to the U.S. Patent and Trademark Office on July 18, 2002. A copy of the Part B - Fee Transmittal, and a copy of the postcard with the PTO receipt date of July 24, 2002 stamped on it, is enclosed. The issue fee was filed within the three-month response period.

Applicant respectfully requests that the application be reinstated, and placed in condition for issuance.

11/21/2002 KDOWNING 00000001 08482402
01 FC:1460 130.00 CH

It is our understanding that no fee is required. However, the Commissioner is hereby authorized to charge any deficient payment of fees associated with this communication or credit any overpayment to Deposit Account No. 13-5135 .

Respectfully submitted,

Donald E. Stout

Donald E. Stout
Registration No. 34,493

September 26, 2002
Stout, Uxa, Buyan & Mullins, LLP
4 Venture, Suite 300
Irvine, CA 92618
949-450-1750 *telephone*

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal service as first class mail in an envelope addressed to: Box Issue Fee
Commissioner for Patents
Washington, D.C. 20231

Signature: Dawn E. Zuniga
Dawn Zuniga

Date: 9/26/02
September 26, 2002

The U.S. Patent & Trademark Office official mailroom stamp affixed hereto acknowledges receipt of the documents indicated below.

Applicant Rapoport, Basil

U.S. Serial No. 08/482,402 Docket No. A-1697div3

Filed 06/07/95

Title/Mark Disease Associated Human...

Date Mailed 7/18/02 Date Due 8/1/02

enclosed herewith:

- ☐ Patent Application ____ pgs ____ claims ☐ transmittal ☐ dep. acct. authorization
- ☐ Provisional Patent Application ____ pgs ☐ transmittal ☐ dep. acct. authorization
- ☐ Trademark/Servicemark Application ☐ transmittal letter ☐ dep. acct. authorization
- ☐ ____ specimen(s) ☐ Statement of Use ☐ Amendment to Allege Use
- ☒ Drawings: 37 sheet(s) ☐ informal ☒ formal & transmittal
- ☐ Check No.: ____ in the amount of $ ____
- ☐ Declaration and/or Power of Attorney
- ☐ Assignment ☐ Recordation Cover ☐ dep. acct. authorization
- ☐ Small Entity Status form(s) ☐ an individual ☐ a small business
- ☐ Response to Notice to File Missing parts of Application
- ☐ Amendment/Response ☐ transmittal ☐ dep. acct. authorization
- ☐ Information Disclosure Statement ☐ form PTO1449 ☐ ____ copies of references
- ☒ Issue Fee transmittal ☒ dep. acct. authorization
- ☐ Status Inquiry
- ☐ NASA Declaration
- ☒ [redacted]
- ☒ PTOL-85
- ☐
- ☒ Certificate of Mailing ☐ Express Mail ☒ first class mail

DES

OIPE JC100 JUL 24 2002 PATENT & TRADEMARK OFFICE

The U.S. Patent & Trademark Office official mailroom stamp affixed hereto acknowledges receipt of the documents indicated below.

Applicant Rapoport, Basil

U.S. Serial No. 08/482,402 Docket No. A-1697div3

Filed 06/07/95

Title/Mark Disease Associated Human...

Date Mailed 7/18/02 Date Due 8/1/02

enclosed herewith:

- ☐ Patent Application ____ pgs ____ claims ☐ transmittal ☐ dep. acct. authorization
- ☐ Provisional Patent Application ____ pgs ☐ transmittal ☐ dep. acct. authorization
- ☐ Trademark/Servicemark Application ☐ transmittal letter ☐ dep. acct. authorization
- ☐ ____ specimen(s) ☐ Statement of Use ☐ Amendment to Allege Use
- ☒ Drawings: 37 sheet(s) ☐ informal ☒ formal & transmittal
- ☐ Check No.: ____ in the amount of $ ____
- ☐ Declaration and/or Power of Attorney
- ☐ Assignment ☐ Recordation Cover ☐ dep. acct. authorization
- ☐ Small Entity Status form(s) ☐ an individual ☐ a small business
- ☐ Response to Notice to File Missing parts of Application
- ☐ Amendment/Response ☐ transmittal ☐ dep. acct. authorization
- ☐ Information Disclosure Statement ☐ form PTO1449 ☐ ____ copies of references
- ☒ Issue Fee transmittal ☒ dep. acct. authorization
- ☐ Status Inquiry
- ☐ NASA Declaration
- ☒ [redacted]
- ☒ PTOL-85
- ☐
- ☒ Certificate of Mailing ☐ Express Mail ☒ first class mail

DES

OIPE OCT 01 2002 PATENT & TRADEMARK OFFICE JC117

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 2/6/08 Paper No.: —

TO SPE OF : ART UNIT 1642

SUBJECT : Request for Certificate of Correction for Appl. No.: 8/482402 Patent No: 7196181 B1

A response is requested with respect to a request for a certificate of correction.

With respect to the change(s) requested to correct Office and/or Applicant's errors, should the patent read as shown in the certificate of correction attached herewith or the COCIN document(s), in IFW images for the above-identified patented application? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

If the response is for an IFW, within 7 days, please complete and forward the response, to the employee (named below) via scanning into application images, using document code **COCX**.

If the response is for a paper file wrapper, please complete the response and forward the response with the paper file wrapper, to the employee (named below), within 7 days, to:

Certificates of Correction Branch (CofC)
South Tower - 9A22
Palm Location 7580

VIRGINIA TOLBERT
Certificates of Correction Branch
703-308-9390 ext. 113

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: _____

LARRY R. HELMS — **SPE**

1642/43 — **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

COOLEY GODWARD KRONISH LLP
ATTN: PATENT GROUP
SUITE 1100
777 - 6TH STREET, NW
WASHINGTON DC 20001-3703

MAILED

OCT 16 2009

OFFICE OF PETITIONS

In re Patent No. 7,297,313 :
Issued: November 20, 2007 :
Application No. 08/482,933 : ON PETITION
Filed: June 6, 1995 :
Attorney Docket No. AFFY-018/02US 011851-2109 :

This is a decision on the petition filed November 14, 2007, requesting that the above-identified application be accorded a filing date of June 6, 1995, rather than the presently accorded date of June 7, 1995. The petition is properly treated as a petition under 37 CFR 1.10(c).

Applicant requests the earlier filing date on the basis that the application was purportedly deposited with the U.S. Postal Service (USPS) as Express Mail on June 6, 1995, pursuant to 37 CFR 1.10. In support, applicant has submitted a copy of Express Mail label No. TB 888886812 US, showing a handwritten "date-in" of "6-6-95." The same Express Mail receipt number appears on the original "Request for Filing Divisional Application."

In view of the above evidence, it is concluded that the application was deposited as "Express Mail" with the USPS on June 6, 1995.

The petition is **GRANTED**.

A petition under 37 CFR 1.10(c) does not require a petition fee and none has been charged.

This matter is being referred to the Office of Patent Application Processing (OPAP) for further **processing with a filing date of June 6, 1995, along with a corrected filing receipt.** Thereafter, the application will be forwarded to the Certificate of Corrections Branch for issuance of a Certificate of Correction, reflecting the proper filing date.

Telephone inquiries concerning this matter may be directed the undersigned at (571) 272-3206. All other inquiries should be directed to OPAP or the CofC Branch.

Liana Walsh
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

Paper No. 20

BOZICEVIC, FIELD & FRANCIS LLP
1900 UNIVERSITY AVENUE
SUITE 200
EAST PALO ALTO CA 94303

COPY MAILED

MAR 17 2008

OFFICE OF PETITIONS

In re Application of :
Jen-Chang Hsia :
Application No. 08/482,951 : DECISION ON PETITION
Filed: June 7, 1995 : TO WITHDRAW
Attorney Docket No. 214-214 : FROM RECORD
:

This is a decision on the Request to Withdraw as attorney or agent under 37 C.F.R. § 1.36(b) filed July 9, 2007.

The request is **NOT APPROVED**.

A review of the file record indicates that Bozicevic, Field & Francis, LLP 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.

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

Telephone inquires concerning this decision should be directed to undersigned at 571-272-1642.

April M. Wise
Petitions Examiner
Office of Petitions

cc:
CGUANHONG LONG
PATENT ATTORNEY (CHEM)
DIRECTOR OF APPLICATION DEPARTMENT
CCPIT PATENT & TRADEMARK LAW OFFICE
10/F OCEAN PLAZA
158 FUXINGMENNCI STREET
BEIJING 100031, CHINA

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Paper No. 13

Fulbright & Jaworski
666 Fifth Avenue
New York, NY 10103-3198

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MAY 0 1 2002

OFFICE OF PETITIONS

ON PETITION

In re Application of
Kanti Jain et al.
Patent No. 5,643,569
Application No. 08/483,728
Filed: June 7, 1995
Attorney Docket No. ROGO210.1-ND

This is a decision on the petition under 37 CFR 1.378(c), filed April 16, 2002, to accept the delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

Petitioner will not receive future correspondence related to maintenance fees for the above-identified patent unless a "fee address" (see PTO/SB/47) is submitted for the above-identified patent.

Telephone inquiries concerning this decision should be directed to Latrice Bond at (703) 308-6911.

The patent file is being forwarded to Files Repository.

Latrice Bond

Latrice Bond
Paralegal Specialist
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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)
5,985,657	1999-11-16	08/483,806	1995-06-07	

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

	Fee	Code
○	3 ½ year	(1551)
◉	7 ½ year	(1552)
○	11 ½ year	(1553)

Small Entity

	Fee	Code
○	3 ½ year	(2551)
○	7 ½ year	(2552)
○	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

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	/Christopher P. Singer/	Date (YYYY-MM-DD)	2008-03-24
Name	Christopher P. Singer	Registration Number	48701

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 record s.

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

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

In re Patent No. 5985657
Issue Date: November 16,1999
Application No. 08483806
Filed: June 7,1995
Attorney Docket No. N100FDDFD1

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed March 24,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 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 March 24,2008 . 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 an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

Telephone inquires related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

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)
5592007	1997-01-07	08484029	1995-06-07	252016-3610

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

	Fee	Code
○	3 ½ year	(1551)
○	7 ½ year	(1552)
◉	11 ½ year	(1553)

Small Entity

	Fee	Code
○	3 ½ year	(2551)
○	7 ½ year	(2552)
○	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

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	/Daniel R. McClure/	Date (YYYY-MM-DD)	2009-02-25
Name	Daniel R. McClure	Registration Number	38962

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 record s.

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

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

In re Patent No. 5592007
Issue Date: January 7,1997
Application No. 08484029
Filed: June 7,1995
Attorney Docket No. 252016-3610

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed February 25,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 11.5 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 February 25,2009 . 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)
6150405	2000-11-21	08484297	1995-06-07	

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

Sole Patentee			
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	/Peter Proctor/	Date (YYYY-MM-DD)	2009-04-08
Name	Peter H Proctor		

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

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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

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

In re Patent No. 6150405
Issue Date: November 21,2000
Application No. 08484297
Filed: June 7,1995
Attorney Docket No. PRO-14

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed April 9,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 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 April 9,2009 . 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 DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

Paper No. 25

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APR 07 2000

SPECIAL PROGRAMS OFFICE
DAC FOR PATENTS

John J. McDonnell
McDonnell Boehnen Hulbert & Berghoff
300 South Wacker Drive, Seventh Floor
Chicago, Illinois 60606

In re Application of
Michael T. Brewer et al.
Application No. 08/484,337
Filed: June 7, 1995
Attorney Docket No. 65850-105-4.

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed August 12, 1999, to revive the above-identified application.

The petition is **Granted**.

This application became abandoned for failure to timely file an Appeal Brief within two months of the September 10, 1998 filing date of the Notice of Appeal. No extensions of time having been obtained pursuant to the provisions of 37 CFR 1.136 (a), the date of abandonment of this application is November 10, 1998. A Notice of Abandonment was mailed in error on May 12, 1999 however, no Notice of Abandonment was mailed with respect to the above referenced abandonment.

As the Notice of Appeal was filed with a three month extension on September 10, 1998 (certificate of mail date, September 2, 1998), it should be noted that the reason for the abandonment was for failure to file an appeal brief as indicated in the petition and not for failure to respond to the final Office Action.

The statement of unintentional delay presented in the petition does not comply with the current rule. Effective December 1, 1997, 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" be submitted. However, the statement presented will be accepted and construed as meaning 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 this is an incorrect interpretation in view of the rules, petitioner is required to provide a statement to that effect.

The Terminal Disclaimer filed December 2, 1999 has been accepted. The period disclaimed is eleven months.

The submission under 37 CFR 1.129(a) has been accepted as the reply.

The application is being returned to Technology Center 1600 for treatment of the submission and the amendment filed August 12, 1999.

Telephone inquiries concerning this matter should be directed to the undersigned Petitions Attorney at (703) 305-4497.

Patricia Faison-Ball

Patricia Faison-Ball
Petitions Attorney
Office of Petitions
Office of the Deputy Assistant Commissioner
for Patent Policy and Projects

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

MAR 16 2000

#25

PRICE HENEVELD COOPER DEWITT & LITTON
695 KENMOOR SE
PO BOX 2567
GRAND RAPIDS , MI 49501

In re Application of :
Knox Van Dyke :
Serial No.: 08/484,469 : PETITION DECISION
Filed: June 7, 1995 :
Attorney Docket No.: CBA01 P-315 :

This letter is in response to the petition under 37 CFR 1.181, filed January 27, 2000, requesting that the supplemental examiner's answer be withdrawn and vacated.

A review of the file history shows that the examiner mailed a Final Office action to applicant on September 19, 1997, setting a three month shortened statutory period for reply. Applicant replied on December 19, 1997, with a further amendment after final rejection. The examiner mailed an Advisory action applicant on January 23, 1998, indicating the amendment would not be entered. Applicant then filed a Notice of Appeal on February 11, 1998, including a request and fee for a two month extension of time. Applicant filed an Appeal Brief on April 29, 1998, including a request and fee for a one month extension of time. The examiner then withdrew the finality of the previous Office action, entered the previously denied amendment after final rejection, and mailed a new non-final Office action to applicant on August 18, 1998, setting a three month shortened statutory period for reply. In reply, applicant filed a request for reinstatement of the Appeal on November 18, 1998, and included a supplemental Appeal Brief. The examiner then mailed an Examiner's Answer to applicant on August 26, 1999. Applicant filed a Reply Brief on October 26, 1999. The examiner mailed a supplemental Examiner's Answer to applicant on January 12, 2000. Applicant then filed this petition seeking to have the supplemental Examiner's Answer withdrawn and vacated.

DISCUSSION

It is clear from the record of prosecution cited above that this application is not in condition for decision by the Board of Patent Appeals and Interferences. It is apparent that in the Appeal Brief filed April 29, 1998, presented arguments or raised new issues not previously presented and therefor not addressed by the examiner. In view of this the examiner properly withdrew the finality of the previous Office action and mailed a new non-final Office action to applicant. Applicant, perhaps in an effort to advance prosecution, requested reinstatement of the appeal (the Appeal had not been dismissed, just suspended) and provided a supplemental appeal brief directed to the additional issues raised in the non-final Office action. Since the application was not under final rejection - i.e. the issues had not been fully developed for appeal - this request should not have been made. However, the examiner acceded to applicant's request and provided an Examiner's Answer to applicant further explaining the position of the Office. In response, applicant filed an eight page Reply Brief presenting rebuttal of the examiner's position thus further

evidencing that the issues before the Office are not yet ripe for consideration by the Board of Appeals. The examiner entered the Reply Brief as is required, but should not have mailed a supplemental Examiner's Answer to applicant. Rather, since new issues or arguments were presented which required comment, a new Office action should have been mailed to applicant.

Applicants' petition is **GRANTED**. The supplemental Examiner's Answer is hereby vacated.

In view of the fact that this application is not ripe for decision by the Board of Appeals, the examiner is directed to reopen prosecution of this application and provide applicant with a new Office action, which may be a Final Office action, setting forth and developing in full all issues upon which the claims are being rejected. The Appeal in this application is suspended until such time as identification of all issues are identified which cannot be resolved. At that time applicant may request reinstatement of the Appeal (no additional fee is required) and file a single Appeal Brief directed to all unresolved issues.

Should there be any questions with respect to this decision, please contact William R. Dixon, Jr., by mail addressed to: Director, Technology Center 1600/2900, Washington, D.C. 20231, or by telephone at (703)308-3824 or by facsimile transmission at (703) 308-7922.

John Kittle
Director, Technology Center 1600/2900

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 3/21/07

TO SPE OF : ART UNIT 1617

SUBJECT : Request for Certificate of Correction on Patent No.: 6962927

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:
Palm location **7580, Certificates of Correction Branch – South Tower – 9A22**
If response is for an IFW, **return to employee (named below) via PUBSCofC Team in MADRAS.**
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 (COCIN)? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Valerie Jackson

Thank You For Your Assistance

Certificates of Correction Branch
Tel. No. 703-308-9390 ext. 114

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:

/Sreeni Padmanabhan/ — SPE

AU 1617 — Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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Paper No. 26

LYNN D APELGREN
ELI LILLY AND COMPANY
PATENT DIVISION/LDA
LILLY CORPORATE CENTER
INDIANAPOLIS, IN 46285

COPY MAILED

JAN 16 2001

OFFICE OF PETITIONS
A/C PATENTS

In re Application of :
Mark L. Brader et al. :
Application No. 08/484,542 : ON PETITION
Filed: June 7, 1995 :
Attorney Docket No. X-10097 :

BEST AVAILABLE COPY

This is a decision on the petition under 37 CFR 1.137(b), filed December 8, 2000, 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 non-final Office action mailed April 13, 2000, 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 above-identified application became abandoned on July 14, 2000.

The above-identified application is being revived solely for purposes of continuity with a continued prosecution application (CPA) filed on December 8, 2000. Under the circumstances of the above-identified application, the requirement in 37 CFR 1.137(c) for a terminal disclaimer is hereby *sua sponte* waived. See 37 CFR 1.183.

Telephone inquiries concerning this decision should be directed to Wan Laymon at (703) 305-9282.

Any inquiry concerning the examination process of this application should be directed to the assigned examiner.

The application file is being forwarded to Technology Center 1600 for further processing.

Wan Laymon

Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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KENYON & KENYON LLP
ONE BROADWAY
NEW YORK, NY 10004

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MAR 2 9 2006

OFFICE OF PETITIONS

In re Patent No. 5,714,459 :
Issue Date: February 3, 1998 :
Application No. 08/484,594 :
Filed: June 7, 1995 :
Attorney Docket No. 12346/46004 :

DECISION ON PETITION

This is a decision is in response to the petition under 37 CFR 1.378(b), filed April 26, 2005, and resubmitted on December 8, 2005, to accept the delayed payment of the maintenance fee for the above-identified patent.

The petition is **dismissed**.

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. No extension of this two-month time limit can be granted under 37 CFR 1.136(a) or (b). Any such petition for reconsideration must be accompanied by the petition fee of $400.00 as set forth in 37 CFR 1.17(f). The petition for reconsideration should include an exhaustive attempt to provide the lacking item(s) noted below because the Director will not undertaken any further reconsideration or review of the matter after a decision on the petition for reconsideration.

The patent issued on February 3, 1998. The first maintenance fee could have been paid during the period from Monday, February 5, 2001 through August 3, 2001 or with a surcharge during the period from August 4, 2001 through Monday, February 4, 2002. Accordingly, this patent expired on February 4, 2002, for failure to timely remit the maintenance fee.

DISCUSSION

Petitioners explained that Myelos Corporation ("Myelos") is a wholly owned subsidiary of Savient Pharmaceuticals, Inc. formerly known as Bio-Technology General Corp. ("BTG"). Myelos is the assignee of the entire interest in the patent. BTG acquired Myelos on March 19, 2001. Myelos merged with and into Myls Acquisition Corp. Knobbe, Martens Olson & Bear, LLP ("Knobbe") was

outside patent counsel for Myelos. As part of the transactions, responsibility for the patent portfolio of Myelos was transferred to Kenyon & Kenyon ("Kenyon") and BTG.

Petitioners stated that on or about October 25, 2001, the physical files that were transferred to Kenyon. Thereafter, Kenyon reviewed the outstanding deadlines and docketed items. Petitioners asserted that the patent file contained a status summary sheet dated October 22, 2001, indicating that the first maintenance fee had been paid. Petitioners explained that the status summary sheet showed that an action was taken on "02-Aug-2001" for a deadline of "03-Aug-2001." Further, petitioners stated that the patent file contained a Maintenance Fee Reminder mailed to Knobbe on August 28, 2001, which was docketed on September 24, 2001, for a 3.5 year maintenance fee with surcharge due February 3, 2002. Copies of the status sheet and the Reminder accompany the present petition.

Prior to the transfer of the patent file, Robert M. Shaw, former patent counsel for BTG sent a letter to Kenyon, in which he enclosed letters from Knobbe to BTG regarding various Myelos patent applications to which BTG had not responded. Petitioners submitted a copy of the first page of one of the aforementioned letters dated September 7, 2001, from Eric S. Furman, Ph.D. of Knobbe to Shaw, requesting instructions for the payment of the maintenance fee for the subject patent. The letter contained the handwritten word "Paid." Petitioners averred that this letter apprised Kenyon that the maintenance fee had been paid by October 11, 2001 (before the patent file was transferred to Kenyon). Based on Kenyon's belief that the first year maintenance fee had been paid by Knobbe, Kenyon docketed a deadline for the second maintenance, which was due on August 3, 2005. Copies of the relevant records maintained by Kenyon, including the Patent Jacket Data Sheet, accompany the petition.

Petitioners explained that from the time of the transfer of the Myelos patent portfolio (*i.e.* on or about October 25, 2001) to December of 2003, Shaw provided instructions to Kenyon on matters relating to Myelos. Thereafter, Bio-Technology General (Israel) Ltd. (BTGIL) was responsible for providing instructions to Kenyon. Petitioners further explained that during the preparation for an internal reorganization, BTGIL learned on March 31, 2005, from the USPTO website that the patent expired. Upon learning this information, Kenyon investigated the matter and contacted Knobbe to determine whether it received any correspondence from the USPTO regarding the expiration of the patent.[1] Petitioners asserted that under Knobbe standard procedure, it would have forwarded any correspondence to Kenyon; however, Knobbe maintained that it did not receive any such correspondence from the USPTO. Petitioners contended that in the absence of any notification that the patent had expired until the assignee learned of its expiration and notified Kenyon; the delayed payment of the maintenance fee was unavoidable.

[1] Until the filing of the petition, the correspondence address of record remained with Knobbe, Martens, Olson & Bear, LLP of Newport Beach, CA. Petitioners filed a change of correspondence address to Kenyon & Kenyon of New York, NY, which has been made of record.

ANALYSIS

37 CFR 1.378(b) provides that a patent may be reinstated at any time following expiration of the patent for failure to time pay a maintenance fee. A grantable petition to accept a delayed maintenance fee payment under 37 CFR 1.378(b) must include the following:

(1) the required maintenance fee set forth in 37 CFR 1.20(e) - (g);

(2) the surcharge set forth in 37 CFR 1.20(i)(1); and

(3) a showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent.

The petition lacks item (3).

The required showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly. Furthermore, an adequate showing requires a statement by all persons with direct knowledge of the cause of the delay, setting forth the facts as they know them. Copies of all documentary evidence referred to in a statement should be furnished as exhibits to the statement.

As 35 U.S.C. 41(c) requires the payment of fees at specified intervals to maintain a patent in force, rather than some response to a specific action by the Office under 35 U.S.C. 133, a reasonably prudent person in the exercise of due care and diligence would have taken steps to ensure the timely payment of such maintenance fees. Ray v. Lehman, 55 F.3d 606, 609, 34 USPQ2d 1786, 1788 (Fed. Cir. 1995). That is, an adequate showing that the delay in payment of the maintenance fee at issue was "unavoidable" within the meaning of 35 U.S.C. 41(c) and 37 CFR 1.378(b)(3) requires a showing of the steps taken to ensure the timely payment of the maintenance fees for this patent. Id. Thus, where the record fails to disclose that the patentee took reasonable steps, or discloses that the patentee took no steps, to ensure timely payment of the maintenance fee, 35 U.S.C. 41(c) and 37 CFR 1.378(b)(3) preclude acceptance of the delayed payment of the maintenance fee under 37 CFR 1.378(b).

Acceptance of a late maintenance fee under the unavoidable delay standard is considered under the same standard for reviving an abandoned application under 35 U.S.C. § 133. This is a very stringent standard. 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.

In re Mattullath, 38 App. D.C. 497, 514-15 (1912) (quoting Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 667-68 (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). Moreover, patentee's lack of knowledge of the need to pay the maintenance fee and the failure to receive the Maintenance Fee Reminder do not constitute unavoidable delay. See Patent No. 4,409,763, 7 USPQ2d 1798 (Comm'r Pat. 1988).

The general standard applied by the Office requires a petitioner to establish that the patentee or his successors in interest treated the patent the same as a reasonable and prudent person would treat his most important business. Smith v. Mossinghoff, 671 F.2d 533, 538 213 USPQ 977, 982 (D.C. Cir. 1982). In determining whether the delay in paying a maintenance fee was unavoidable, one looks to whether the party responsible for payment of the maintenance fee exercised the due care of a reasonably prudent person. Ray v. Lehman, 55 F.3d 606, 608-609, 34 USPQ2d 1786, 1787 (Fed. Cir. 1995). The patent owner at the time of the expiration of the patent is ultimately the person responsible to ensure the timely payment of the maintenance fees. The patent owner may engage another to track and/or pay the maintenance fees; however, merely engaging another does not relieve the patent owner from his obligation to take appropriate steps to ensure the timely payment of such maintenance fees. See California Medical Prods. v. Tecnol Medical Prods., 921 F. Supp. 1219, 1259 (D. Del. 1995) Moreover, the U.S. Patent and Trademark Office must rely on the actions or inactions of duly authorized and voluntarily chosen representatives of the applicant, and applicant is bound by the consequences of those actions or inactions. Link v. Wabash, 370 U.S. 626, 633-34 (1962); Huston v. Ladner, 973 F.2d 1564, 1567, 23 USPQ2d 1910, 1913 (Fed. Cir. 1992). Specifically, petitioner's delay caused by the actions or inactions of his voluntarily chosen representative does not constitute unavoidable delay within the meaning of 35 USC 133 or 37 CFR 1.137(a). Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2d 1130 (D. Ind. 1987; 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) (delay caused by a failure to act by or on behalf of the party in interest at the time the action needs to be taken is binding on the successor in title).

Initially, the Office notes that during the period from the first day the maintenance fee could have been paid on Monday, February 5, 2001 to October 25, 2001, Knobbe was responsible for the maintenance of the patent. From October 25, 2001 until Monday, February 4, 2002, the responsibility for maintaining the patent transferred to Kenyon.

In the present petition, it appears that Kenyon is asserting that delay was caused by a docketing error on the part of Knobbe, which led Kenyon to believe that Knobbe paid the first maintenance fee. An error in a docketing system could possibly result in a finding that a delay in payment was unavoidable if it were shown that reasonable care was exercised in designing and operating the system and that the patentee took reasonable steps to make sure that the patent was entered into the system to ensure timely payment of the maintenance fees.

Specifically, a delay resulting from an error (e.g., a docketing error) on the part of an employee in the performance of a clerical function may provide the basis for a showing of "unavoidable" delay, provided it is shown that:

(A) the error was the cause of the delay at issue;
(B) there was in place a business routine for performing the clerical function that could reasonably be relied upon to avoid errors in its performance; and
(C) the employee was sufficiently trained and experienced with regard to the function and routine for its performance that reliance upon such employee represented the exercise of due care. See MPEP 711.03(c)

Petitioners did not submit any statements from Shaw, Furman or any employee of Knobbe to explain what errors may have occurred in docketing the maintenance fees that would have led Kenyon to believe that the first maintenance fee was timely paid. In any renewed petition, petitioners must obtain statements from Shaw, Furman, and any other party with knowledge of Knobbe's docketing system, setting forth any errors in its performance. Specifically, petitioners should try to obtain a statement from the person who indicated "Paid" in handwriting on the letter from Furman to Shaw. If the error was on the part of an employee in the performance of a clerical function, petitioners must provide the USPTO with information regarding the employee's training and experience, as well as the level of supervision of his or her work.

The record does not show that petitioners or Kenyon diligently inquired with Knobbe or the USPTO as to the status of the patent and maintenance fee payment. The Office notes that petitioners asserted that Knobbe's status summary sheet indicated that the first maintenance fee had been paid because the sheet showed that an action was taken on "02-Aug-2001" for a deadline of "03-Aug-2001." However, a review of the status summary sheet revealed that the action taken on August 2, 2001, was listed as "Tax 3.5," not payment of the maintenance fee. This information conflicted with the information indicated on the Maintenance Fee Reminder, which was docketed on September 24, 2001, for a 3.5-year maintenance fee with surcharge due February 3, 2002. Furthermore, the handwritten annotation "Paid" appeared on one of the letters, which Shaw stated that BTG had not yet responded. More importantly, this letter of September 7, 2001, indicated that a maintenance fee payment must be submitted to the USPTO by February 3, 2002, to maintain the patent.

It is unclear why this conflicting information, as well as a handwritten annotation, "Paid," did not prompt Kenyon to examine whether the information was correct and if the maintenance fee was paid timely. The record reveals that Kenyon did not take any steps to independently investigate the status of the patent, but rather relied solely on the transferred file from Knobbe. This inaction does not

reflect the due care and diligence exercised by a prudent and careful person with respect to his or her most important business, and as such, does not demonstrate unavoidable delay. Rather, a prudent person would have taken actions to ensure that the services of Knobbe were timely performed as specified in the patent portfolio. Curiously, BTGIL became aware of the expiration of the patent from the USPTO website during its reorganization; however, Kenyon did not provide an explanation as to why its was unavoidable prevented from determining the patent's status to ensure the timely payment of the maintenance fee.

As previously stated, petitioners contented that in the absence of any notification that the patent had expired until the assignee learned of its expiration and notified Kenyon; the delayed payment of the maintenance fee was unavoidable. The Office reminds petitioners that pursuant to the maintenance fee statutes, the USPTO has no duty to notify patentees when their maintenance fees are due. Rydeen v. Quigg, 748 F. Supp. 900, 16 USPQ2d 1876 (D.D.C. 1990). The USPTO will attempt to provide notices as reminders that maintenance fees are due, but the notices, errors in the notices, or the lack of notices, will in no way relieve a patentee from the responsibility to make timely payment of each maintenance fee to prevent the patent from expiring by operation of law. Id. Maintenance fee notices provided by the USPTO are merely courtesy in nature and intended to aid patentees. These notices, errors in these notices or lack of notices, will in no way shift the burden of monitoring the time for paying maintenance fees on patents from the patentee to the USPTO.

The showing of record is inadequate to establish unavoidable delay within the meaning of 37 CFR 1.378(b). Accordingly, the petition is **dismissed**.

The second maintenance fee payment was due on February 3, 2006. Accordingly, the Office will charge the $1,150.00 fee to the Deposit Account, as authorized.

Petitioners should note that if this petition is not renewed, or if renewed and not granted, then the maintenance fees and post expiration surcharge are refundable. The $400.00 petition fee for seeking reconsideration is not refundable. Any request for refund should be in writing to the following address:

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A copy of this decision should accompany petitioners' request.

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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 may 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
United States Patent and Trademark Office
P.O. Box 1450
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www.uspto.gov

KENYON & KENYON LLP
ONE BROADWAY
NEW YORK, NY 10004

COPY MAILED

MAR 29 2006

OFFICE OF PETITIONS

In re Patent No. 5,714,459 :
Issue Date: February 3, 1998 : DECISION ON PETITION
Application No. 08/484,594 :
Filed: June 7, 1995 :
Attorney Docket No. 12346/46004 :

This is a decision is in response to the petition under 37 CFR 1.378(b), filed April 26, 2005, and resubmitted on December 8, 2005, to accept the delayed payment of the maintenance fee for the above-identified patent.

The petition is **dismissed**.

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. No extension of this two-month time limit can be granted under 37 CFR 1.136(a) or (b). Any such petition for reconsideration must be accompanied by the petition fee of $400.00 as set forth in 37 CFR 1.17(f). The petition for reconsideration should include an exhaustive attempt to provide the lacking item(s) noted below because the Director will not undertaken any further reconsideration or review of the matter after a decision on the petition for reconsideration.

The patent issued on February 3, 1998. The first maintenance fee could have been paid during the period from Monday, February 5, 2001 through August 3, 2001 or with a surcharge during the period from August 4, 2001 through Monday, February 4, 2002. Accordingly, this patent expired on February 4, 2002, for failure to timely remit the maintenance fee.

DISCUSSION

Petitioners explained that Myelos Corporation ("Myelos") is a wholly owned subsidiary of Savient Pharmaceuticals, Inc. formerly known as Bio-Technology General Corp. ("BTG"). Myelos is the assignee of the entire interest in the patent. BTG acquired Myelos on March 19, 2001. Myelos merged with and into Myls Acquisition Corp. Knobbe, Martens Olson & Bear, LLP ("Knobbe") was

outside patent counsel for Myelos. As part of the transactions, responsibility for the patent portfolio of Myelos was transferred to Kenyon & Kenyon ("Kenyon") and BTG.

Petitioners stated that on or about October 25, 2001, the physical files that were transferred to Kenyon. Thereafter, Kenyon reviewed the outstanding deadlines and docketed items. Petitioners asserted that the patent file contained a status summary sheet dated October 22, 2001, indicating that the first maintenance fee had been paid. Petitioners explained that the status summary sheet showed that an action was taken on "02-Aug-2001" for a deadline of "03-Aug-2001." Further, petitioners stated that the patent file contained a Maintenance Fee Reminder mailed to Knobbe on August 28, 2001, which was docketed on September 24, 2001, for a 3.5 year maintenance fee with surcharge due February 3, 2002. Copies of the status sheet and the Reminder accompany the present petition.

Prior to the transfer of the patent file, Robert M. Shaw, former patent counsel for BTG sent a letter to Kenyon, in which he enclosed letters from Knobbe to BTG regarding various Myelos patent applications to which BTG had not responded. Petitioners submitted a copy of the first page of one of the aforementioned letters dated September 7, 2001, from Eric S. Furman, Ph.D. of Knobbe to Shaw, requesting instructions for the payment of the maintenance fee for the subject patent. The letter contained the handwritten word "Paid." Petitioners averred that this letter apprised Kenyon that the maintenance fee had been paid by October 11, 2001 (before the patent file was transferred to Kenyon). Based on Kenyon's belief that the first year maintenance fee had been paid by Knobbe, Kenyon docketed a deadline for the second maintenance, which was due on August 3, 2005. Copies of the relevant records maintained by Kenyon, including the Patent Jacket Data Sheet, accompany the petition.

Petitioners explained that from the time of the transfer of the Myelos patent portfolio (*i.e.* on or about October 25, 2001) to December of 2003, Shaw provided instructions to Kenyon on matters relating to Myelos. Thereafter, Bio-Technology General (Israel) Ltd. (BTGIL) was responsible for providing instructions to Kenyon. Petitioners further explained that during the preparation for an internal reorganization, BTGIL learned on March 31, 2005, from the USPTO website that the patent expired. Upon learning this information, Kenyon investigated the matter and contacted Knobbe to determine whether it received any correspondence from the USPTO regarding the expiration of the patent.[1] Petitioners asserted that under Knobbe standard procedure, it would have forwarded any correspondence to Kenyon; however, Knobbe maintained that it did not receive any such correspondence from the USPTO. Petitioners contended that in the absence of any notification that the patent had expired until the assignee learned of its expiration and notified Kenyon; the delayed payment of the maintenance fee was unavoidable.

[1] Until the filing of the petition, the correspondence address of record remained with Knobbe, Martens, Olson & Bear, LLP of Newport Beach, CA. Petitioners filed a change of correspondence address to Kenyon & Kenyon of New York, NY, which has been made of record.

ANALYSIS

37 CFR 1.378(b) provides that a patent may be reinstated at any time following expiration of the patent for failure to time pay a maintenance fee. A grantable petition to accept a delayed maintenance fee payment under 37 CFR 1.378(b) must include the following:

(1) the required maintenance fee set forth in 37 CFR 1.20(e) - (g);

(2) the surcharge set forth in 37 CFR 1.20(i)(1); and

(3) a showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent.

The petition lacks item (3).

The required showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly. Furthermore, an adequate showing requires a statement by all persons with direct knowledge of the cause of the delay, setting forth the facts as they know them. Copies of all documentary evidence referred to in a statement should be furnished as exhibits to the statement.

As 35 U.S.C. 41(c) requires the payment of fees at specified intervals to maintain a patent in force, rather than some response to a specific action by the Office under 35 U.S.C. 133, a reasonably prudent person in the exercise of due care and diligence would have taken steps to ensure the timely payment of such maintenance fees. Ray v. Lehman, 55 F.3d 606, 609, 34 USPQ2d 1786, 1788 (Fed. Cir. 1995). That is, an adequate showing that the delay in payment of the maintenance fee at issue was "unavoidable" within the meaning of 35 U.S.C. 41(c) and 37 CFR 1.378(b)(3) requires a showing of the steps taken to ensure the timely payment of the maintenance fees for this patent. Id. Thus, where the record fails to disclose that the patentee took reasonable steps, or discloses that the patentee took no steps, to ensure timely payment of the maintenance fee, 35 U.S.C. 41(c) and 37 CFR 1.378(b)(3) preclude acceptance of the delayed payment of the maintenance fee under 37 CFR 1.378(b).

Acceptance of a late maintenance fee under the unavoidable delay standard is considered under the same standard for reviving an abandoned application under 35 U.S.C. § 133. This is a very stringent standard. 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.

In re Mattullath, 38 App. D.C. 497, 514-15 (1912) (quoting Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 667-68 (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). Moreover, patentee's lack of knowledge of the need to pay the maintenance fee and the failure to receive the Maintenance Fee Reminder do not constitute unavoidable delay. See Patent No. 4,409,763, 7 USPQ2d 1798 (Comm'r Pat. 1988).

The general standard applied by the Office requires a petitioner to establish that the patentee or his successors in interest treated the patent the same as a reasonable and prudent person would treat his most important business. Smith v. Mossinghoff, 671 F.2d 533, 538 213 USPQ 977, 982 (D.C. Cir. 1982). In determining whether the delay in paying a maintenance fee was unavoidable, one looks to whether the party responsible for payment of the maintenance fee exercised the due care of a reasonably prudent person. Ray v. Lehman, 55 F.3d 606, 608-609, 34 USPQ2d 1786, 1787 (Fed. Cir. 1995). The patent owner at the time of the expiration of the patent is ultimately the person responsible to ensure the timely payment of the maintenance fees. The patent owner may engage another to track and/or pay the maintenance fees; however, merely engaging another does not relieve the patent owner from his obligation to take appropriate steps to ensure the timely payment of such maintenance fees. See California Medical Prods. v. Tecnol Medical Prods., 921 F. Supp. 1219, 1259 (D. Del. 1995) Moreover, the U.S. Patent and Trademark Office must rely on the actions or inactions of duly authorized and voluntarily chosen representatives of the applicant, and applicant is bound by the consequences of those actions or inactions. Link v. Wabash, 370 U.S. 626, 633-34 (1962); Huston v. Ladner, 973 F.2d 1564, 1567, 23 USPQ2d 1910, 1913 (Fed. Cir. 1992). Specifically, petitioner's delay caused by the actions or inactions of his voluntarily chosen representative does not constitute unavoidable delay within the meaning of 35 USC 133 or 37 CFR 1.137(a). Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2d 1130 (D. Ind. 1987; 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) (delay caused by a failure to act by or on behalf of the party in interest at the time the action needs to be taken is binding on the successor in title).

Initially, the Office notes that during the period from the first day the maintenance fee could have been paid on Monday, February 5, 2001 to October 25, 2001, Knobbe was responsible for the maintenance of the patent. From October 25, 2001 until Monday, February 4, 2002, the responsibility for maintaining the patent transferred to Kenyon.

In the present petition, it appears that Kenyon is asserting that delay was caused by a docketing error on the part of Knobbe, which led Kenyon to believe that Knobbe paid the first maintenance fee. An error in a docketing system could possibly result in a finding that a delay in payment was unavoidable if it were shown that reasonable care was exercised in designing and operating the system and that the patentee took reasonable steps to make sure that the patent was entered into the system to ensure timely payment of the maintenance fees.

Specifically, a delay resulting from an error (e.g., a docketing error) on the part of an employee in the performance of a clerical function may provide the basis for a showing of "unavoidable" delay, provided it is shown that:

(A) the error was the cause of the delay at issue;
(B) there was in place a business routine for performing the clerical function that could reasonably be relied upon to avoid errors in its performance; and
(C) the employee was sufficiently trained and experienced with regard to the function and routine for its performance that reliance upon such employee represented the exercise of due care. See MPEP 711.03(c)

Petitioners did not submit any statements from Shaw, Furman or any employee of Knobbe to explain what errors may have occurred in docketing the maintenance fees that would have led Kenyon to believe that the first maintenance fee was timely paid. In any renewed petition, petitioners must obtain statements from Shaw, Furman, and any other party with knowledge of Knobbe's docketing system, setting forth any errors in its performance. Specifically, petitioners should try to obtain a statement from the person who indicated "Paid" in handwriting on the letter from Furman to Shaw. If the error was on the part of an employee in the performance of a clerical function, petitioners must provide the USPTO with information regarding the employee's training and experience, as well as the level of supervision of his or her work.

The record does not show that petitioners or Kenyon diligently inquired with Knobbe or the USPTO as to the status of the patent and maintenance fee payment. The Office notes that petitioners asserted that Knobbe's status summary sheet indicated that the first maintenance fee had been paid because the sheet showed that an action was taken on "02-Aug-2001" for a deadline of "03-Aug-2001." However, a review of the status summary sheet revealed that the action taken on August 2, 2001, was listed as "Tax 3.5," not payment of the maintenance fee. This information conflicted with the information indicated on the Maintenance Fee Reminder, which was docketed on September 24, 2001, for a 3.5-year maintenance fee with surcharge due February 3, 2002. Furthermore, the handwritten annotation "Paid" appeared on one of the letters, which Shaw stated that BTG had not yet responded. More importantly, this letter of September 7, 2001, indicated that a maintenance fee payment must be submitted to the USPTO by February 3, 2002, to maintain the patent.

It is unclear why this conflicting information, as well as a handwritten annotation, "Paid," did not prompt Kenyon to examine whether the information was correct and if the maintenance fee was paid timely. The record reveals that Kenyon did not take any steps to independently investigate the status of the patent, but rather relied solely on the transferred file from Knobbe. This inaction does not

reflect the due care and diligence exercised by a prudent and careful person with respect to his or her most important business, and as such, does not demonstrate unavoidable delay. Rather, a prudent person would have taken actions to ensure that the services of Knobbe were timely performed as specified in the patent portfolio. Curiously, BTGIL became aware of the expiration of the patent from the USPTO website during its reorganization; however, Kenyon did not provide an explanation as to why its was unavoidable prevented from determining the patent's status to ensure the timely payment of the maintenance fee.

As previously stated, petitioners contented that in the absence of any notification that the patent had expired until the assignee learned of its expiration and notified Kenyon; the delayed payment of the maintenance fee was unavoidable. The Office reminds petitioners that pursuant to the maintenance fee statutes, the USPTO has no duty to notify patentees when their maintenance fees are due. Rydeen v. Quigg, 748 F. Supp. 900, 16 USPQ2d 1876 (D.D.C. 1990). The USPTO will attempt to provide notices as reminders that maintenance fees are due, but the notices, errors in the notices, or the lack of notices, will in no way relieve a patentee from the responsibility to make timely payment of each maintenance fee to prevent the patent from expiring by operation of law. Id. Maintenance fee notices provided by the USPTO are merely courtesy in nature and intended to aid patentees. These notices, errors in these notices or lack of notices, will in no way shift the burden of monitoring the time for paying maintenance fees on patents from the patentee to the USPTO.

The showing of record is inadequate to establish unavoidable delay within the meaning of 37 CFR 1.378(b). Accordingly, the petition is **dismissed**.

The second maintenance fee payment was due on February 3, 2006. Accordingly, the Office will charge the $1,150.00 fee to the Deposit Account, as authorized.

Petitioners should note that if this petition is not renewed, or if renewed and not granted, then the maintenance fees and post expiration surcharge are refundable. The $400.00 petition fee for seeking reconsideration is not refundable. Any request for refund should be in writing to the following address:

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Christina Tartera Donnell

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Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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In re Patent No. 5621417
Issue Date: April 15,1997
Application No. 08484754
Filed: June 7,1995
Attorney Docket No. RD-23.376

:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)

This is a decision on the electronic petition, filed November 10,2006 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 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 November 10,2006. 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 an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

Telephone inquires related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

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)
5621417	1997-04-15	08484754	1995-06-07	RD-23,376-6

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

	Fee	Code
○	3 ½ year	(1551)
◉	7 ½ year	(1552)
○	11 ½ year	(1553)

Small Entity

	Fee	Code
○	3 ½ year	(2551)
○	7 ½ year	(2552)
○	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

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	/Kenneth R. Glick/	Date (YYYY-MM-DD)	2006-11-09
Name	KENNETH R. GLICK	Registration Number	28612

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

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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.

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